LEGISLATIVE RESEARCH COMMISSION

REPORT
TO THE
1979
GENERAL ASSEMBLY OF NORTH CAROLINA

CREDIT AND INTEREST LAWS

RALEIGH, NORTH CAROLINA

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STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

January 10, 1979

TO THE MEMBERS OF THE 1979 GENERAL ASSEMBLY:

The Legislative Research Commission herewith reports to the 1979 General Assembly of North Carolina on the matter of credit and interest laws. The report is made pursuant to Resolution 90 (House Joint Resolution 1283) of the 1977 General Assembly.

This report was prepared by the Legislative Research Commission Committee on Credit and Interest Laws and it is transmitted by the Legislative Research Commission to the members of the 1979 General Assembly for their consideration.

Respectfully submitted,

John T. Henley

Carl J. Stewart, Jr.

Cochairmen

Legislative Research Commission

TABLE OF CONTENTS

TABLE OF CONTENTS (con't)

INTRODUCTION

The Legislative Research Commission, created by Article 6B of Chapter 120 of the General Statutes, is authorized pursuant to the direction of the General Assembly "to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" and "to report to the General Assembly the results of the studies made," which reports "may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations [G.S. 120-30.17]."

The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and consists of five Representatives and five Senators, who are appointed respectively by the Co-Chairman (G.S. 120-30.10(a)).

At the direction of the 1977 General Assembly, the Legislative Research Commission has undertaken studies of twenty-seven matters, which were arranged into ten groups according to related subject matter (see Appendix A for a list of the Commission members). Pursuant to G.S. 120-30.10(b) and (c), the Commission Co-Chairmen appointed committees consisting of legislators and public members to conduct the studies. Each member of the Legislative Research Commission was delegated the responsibility of overseeing one group of studies and causing the findings and recommendations of the various committees to be reported to the Commission. In addition, one Senator and one Representative from each committee were designated Co-Chairmen.

The General Assembly by Resolution 90 of the 1977 Session (House Joint Resolution 1283) directed the Legislative Research Commission (hereafter referred to as "Commission"):

> to study Chapter 24 of the North Carolina General Statutes and related credit and interest laws, and to determine the feasibility of establishing one supervisory authority over all lenders in North Carolina [see Appendix B].

The Legislative Research Commission placed this study under the Consumer Oriented Subject Area for which Senator Vernon E. White of the Commission was responsible. This study was assigned to the Committee on Credit and Interest Laws which was co-chaired by Representative E. Graham Bell and Senator Melvin R. Daniels, Jr. A cost of the membership is found at Appendix C.

COMMITTEE PROCEEDINGS

The Commission's Committee on Credit and Interest Laws held three meetings during the course of its study. Representatives of the Attorney General's office, state agencies regulating financial institutions, associations of financial institutions operating within the State, and consumer groups were invited to attend the Committee's meetings and to aid in the Committee's deliberations. A list of the witnesses appearing before the Committee will be found at Appendix D.

January 20, 1978

The organizational meeting of the Committee was held on January 20, 1978.

The Committee was allocated $6,000 to conduct the study by the Commission. In view of the allocation the Committee adopted an operating budget which would have permitted four meetings.

In his opening remarks, Representative Bell, the Committee's cochairman, explained the authorizing resolution specifically directs the Committee to examine whether the regulation of lenders in North Carolina can be improved to the benefit of the public by the establishment of one supervisory agency to regulate all lenders. (Section 1(5) of Resolution 90 in Appendix B). He suggested that in the interest of conducting an indepth study into other areas of the General Statutes, the examination of one regulatory agency should be excluded from the Committee's study. A motion to delete from the Committee's study the consideration of one regulatory agency was made by Representative Cook and seconded by Representative Schwartz. That motion passed.

Representative Bell stated that his intent in sponsoring the authorizing resolution was not to change the present maximum interest rates permitted on loans in this State but to clarify the laws establishing these rates. He noted the confusion of the members of the House of Representatives' Banking Committee during the 1977 Session as to what the law actually was. Representative Bell said that he desired the Committee to study the need for matters involving the regulation of lenders in North Carolina including amendments to Chapters 54 and 54A of the General Statutes which concern mutual and stock-owned savings and loan associations.

The chair then recognized interested individuals to speak on what they thought the Committee should do in its study.

Mr. Alan Hirsch, Assistant Attorney General with the Consumer Protection Division of the Department of Justice was recognized first. He urged the Committee to clarify the complex interest rate statutes to benefit all the people. He offered the services of his office in aiding the work of the Committee.

Mr. Robert H. Gage, an attorney with the Legal Aid Society of Mecklenburg County, told the Committee that he came to speak for all low-income consumers in this State. He said that since the first maximum interest rate was established by the General Assembly in 1867, many exceptions have been made. He urged the Committee to study the possibility of providing a flexible comprehensible system of interest regulation while keeping in its mind the particular needs of low-income consumers and consumers in general.

Mr. Gage made the following specific suggestions:

1. the adoption of uniform technology in interest laws;

2. the granting to the Banking Commission authority to license and regulate all second mortgage lenders;

3. the addition of civil penalty provisions to Article 2 of G.S. Chapter 24, Loans Secured by Secondary or Junior Mortgages, similar to those set forth at the end of the Retail Installment Sales Act, G.S. Chapter 25A, which provides for private enforcement of the law at no cost to the tax payer;

4. the reorganization of G.S. 24-1.1 through G.S. 24-1.3, the statutes which set most of the interest rates, according to class of collateral.

5. the transfer of all major interest rate provisions into Chapter 24 for the purpose of providing early reference and access in determining the costs of borrowing money.

The text of Mr. Gage's statement is found at Appendix E.

The Honorable Harlan E. Boyles, the State Treasurer, was next recognized. He outlined the work of the Banking Commission's special study of State banking laws and regulations (see Appendix F).

A letter from Mr. John Tropman, the Commissioner of Banks, was distributed to the Committee. The letter, which is attached as Appendix G, outlines Mr. Tropman's suggestions as to what the Committee should consider while pursuing this study.

Mr. John L. Jernigan, Chairman of the Banking Law Subcommittee of the Commercial Banking and Business Law Committee of the North Carolina Bar Association, said that his organization had no specific recommendations to the Committee but had concerns about the state of the interest laws. He noted the interest of his Committee in removing the ambiguities and inconsistencies from the current law; not in making suggestions and recommendations regarding rates or other substantive matters. He recommended consideration of a substantive rewrite of G.S. Chapter 24 and related stuatutes to provide clearer and more usuable interest laws. His statement is found at Appendix H.

Mr. Ed Greer, Chairman of the State Employees' Credit Union, opposed the consideration of a single regulatory agency for all lenders. A copy of his letter is attached at Appendix I.

Mr. Herbert Wentworth, President of the North Carolina Savings and Loan League, presented a statement (see Appendix J) on behalf of Mr. Theo H. Pitt, Jr., Chairman of the North Carolina Savings and Loan Legislative Committee.

Mr. Lindsay Warren, representing the mortgage banking industry, and Mr. John Jordan, representing the commercial banking industry, both offered to the Committee the services and the cooperation of their organizations in any capacity needed.

At the end of the meeting the Committee directed the staff, with the assistance of all interested groups, to compile information regarding areas of duplication and confusion in G.S. Chapter 24, uniform state laws, uniform interest laws and model state laws.

March 30, 1978

The Committee on Credit and Interest Laws held its second meeting on March 30, 1978 in Raleigh.

Senator Daniels, the Cochairman, reminded the members that the staff had prepared and mailed to them two memoranda in advance of that meeting.

The first memorandum, attached as Appendix K, analyzes the results of a questionnaire mailed in January, 1978, to representatives of government agencies, financial institutions and consumer groups. The questionnaire asked the recipients for their general and specific criticisms of Chapter 24 of the General Statutes and related interest laws and whether they believed that the citizens of the State would be served better by a complete revision

of, rather than amendments to, the present interest laws. Of the 14 organizations responding to the questionnaire, four favored a complete revision, seven opposed it and three gave no opinion. The first memorandum listed general and specific criticisms of the interest laws (pages 2 through 5 of the memorandum). A copy of the response of each organization answering the questionnaire is attached at the end of the memorandum. The Cochairman agreed that each of the respondents would be recognized to explain and elaborate on his suggestions. They also agreed that those respondents having suggestions for improvement to Chapters 54 and 54A of the General Statutes, concerning savings and loan associations, might make them as they are recognized.

Ms. Rebecca Bevacque, representing the Attorney General's Office in the absence of Mr. Alan Hirsch, stated that a complete revision of the statutes was in order (see Appendix K-6).

Mr. John Tropman, the Commissioner of Banks, stated that there was confusion in the public's mind about interest rates used by unregulated lenders, and that he believed that reference should be made in Chapter 24 as to whether a particular ceiling applies to regulated or unregulated lenders (see Appendix K-7). In response to a question by Senator Daniels, Mr. Tropman said that Annual Percentage Rates (APR's) should not be designated as the legal rate.

Mr. Roy D. High, Administrator of the Credit Union Division of the Department of Commerce, stated that he had no problems with regard to Chapter 24 as the interest charged by State-chartered credit unions is regulated under Chapter 54 of the General Statutes (see Appendix K-8).

Mr. William L. Cole, Administrator of the Savings and Loan Division of the Department of Commerce, said that some savings and loan associations are reluctant to permit loan assumptions in view of what they feel is the inadequate fee permitted to be charged under G.S. 24-10(d) for this service. He noted that the fee permitted on assumptions of loans of less than $50,000 is 1% of the principal amount or $25, whichever is less, whereas California permits a loan assumption fee of $125 (see Appendix K-9).

Mr. Cole, speaking to Chapters 54 and 54A of the General Statutes which concern savings and loan associations, said that these chapters are a "mess and need to be rewritten completely." He handed out copies of a preliminary draft of a bill to correct the defects in these chapters and said that the language and provisions of these drafts will be further refined before submission to the 1979 General Assembly.

Mr. Lindsay Warren, Jr., Counsel to the Mortgage Bankers Association of the Carolina's, Inc., suggested the provisions in Chapter 24 relating to first mortgage lending ought to be codified into a single section. He noted that first mortgage lending provisions are contained in G.S. 24-1.1 and 24-1.1A and the fee provisions are in G.S. 24-10 (see Appendix K-10).

Mr. John R. Jordan, Jr., Legislative Counsel to the North Carolina Banker's Association, agreed with Mr. Warren that the maximum fee provisions contained in G.S. 24-10 ought to be clarified so as to stipulate whether these fees are allowed on loans other than those under G.S. 24-1.1. He urged that the terms "percent per annum," used throughout Chapter 24, and "annual percentage rate," used in Chapter 54, be defined. Mr. Jordan said

that the legality of computing interest on a 360 or a 365-day basis for the purposes of the usury laws ought to be clarified (see Appendix K-11).

Mr. John Jernigan, a member of the Commercial Banking and Business Law Committee of the North Carolina Bar Association, said that his group's comments are set out in the materials he submitted and that it would help this Committee in any way it could (see Appendix K-13).

Mr. C. N. Harkey, President of the North Carolina Consumer Finance Association, explained to the Committee that his industry is one of specialty lenders licensed by the Banking Commission's Division of Consumer Finance under the authority of Article 5 of Chapter 53 of the General Statutes. He said he saw no problem with the provisions of the Consumer Finance Act. He said he would not suggest or endorse a general rewrite of the credit statutes but that, if the Committee should consider undertaking such a revision, he would counsel it to consider in its study the text of the Uniform Consumer Credit Code as a basis for such a rewrite (see Appendix K-22).

Representative Cook said that she had trouble in the past getting information as to how many of the loans made by consumer finance companies were refinanced/ and on the insurance arrangements concerning consumer finance loans. She asked Mr. Harkey whether he thought it would be necessary to change these companies' reporting requirements to give legislators needed information. Mr. Harkey responded that the recent amendments introduced by former Representative Michaux to the Consumer Finance Act have eliminated any past abusive practices in the area of consumer finance. Previously the charge was determined in advance of the loan and added to the principal amount; if the loan was refinanced or prepaid, a refund was made on the total amount based on the rule

of 78. Now the charge is computed on a simple interest basis, i.e., the charge is determined on a day-to-day basis--the rate times the amount outstanding. Also the fees which were permitted once at the making of a loan may no longer be charged.

Mr. Harkey said that perhaps some reporting arrangement might be made with regard to credit insurance and accident and health insurance. He admitted that this is an additional cost to the consumer but stated that a customer is made fully aware of the insurance provisions and their cost at the time the loan is made. The customer then has a 15-day period after the loan is made to cancel the insurance and receive a refund.

Mr. Richard S. Clark of the North Carolina Consumer's Council was unable to attend the Committee's first meeting because of inclement weather. He explained his response to the questionnaire (see Appendix L). The statement which Mr. Clark would have given at the Committee's first meeting had he not been snowbound is attached as Appendix M.

Mr. Theo Pitt, President of the Rocky Mount Home Savings and Loan and Chairman of the North Carolina Savings and Loan Association, stated that the whole area of the fee provisions needs to be clarified, specifically those areas relating to late charges and loan assumptions. He said that the contract rate for loans to nonprofit organizations needs to be changed, noting that that rate is now below the home loan rate prevalent in the market place (see Appendix K-27).

Regarding Chapters 54 and 54A of the General Statutes, Mr. Pitt told the Committee that provisions should be made to allow for the conversion of mutual to stock savings and loans and

that the chartering of stock savings and loans and their branches should be based on public convenience as are mutual savings and loans. Appendix N contains the Savings and Loan League's criticisms of Chapter 54 and 54A.

Responding to a question from Representative Johnson, Mr. Pitt said he believed that the statutes dealing with first mortgage loans need to be consolidated.

Mr. Phillip A. Lehman, a staff attorney and spokesman for Orange-Chatham Legal Services, indicated his support for a clarification of Chapter 24 in which the interest rates and charges of a loan would be expressed as uniformly as possible. He suggested that it would be helpful to both borrowers and lenders if the provisions of Chapter 24 relating to interest and charges track the provisions of the Federal Truth-in-Lending Act and if maximum interest rates are organized by class of loans, perhaps by the security on which the loan is based.

Mr. Lehman suggested that the Committee should scrutinize Article 2 of Chapter 24 dealing with loans secured by secondary or junior mortgages. He pointed out to the Committee that the rate of charge permitted by this Article is defined in terms of itself--an obviously confusing situation (see Appendix K-29).

Mr. Leonard G. Green, Assistant Attorney for the Wake County Legal Aid Society, said he believed that Chapter 24 ought to have a definitional section with the same words used consistently throughout. He also suggested a single provision in Chapter 24 where all of the maximum interest rates on the various types of loans would be set out (see Appendix K-36).

The second memorandum by staff which was mailed previous to the Committee meeting of March 30, 1978 outlined the two model acts which deal with interest rate maximums. Both model acts have been proposed by the National Conference of Commissioners on Uniform State Laws.

The Uniform Consumer Credit Code (UCCC) was first proposed in 1968 and was revised in 1974. Eleven states have adopted in substance this act. The UCCC regulates the total consumer process from advertising through collection with variations in law based upon functional differences in the kinds of transactions rather than on kinds of creditors involved. A short summary of the provisions of the UCCC is contained at Appendix O-2.

The second model act the staff presented was the Uniform Land Transaction Act (ULTA). This act was first proposed in 1975 and as of yet it has not been enacted by any state. This act regularizes, regulates, and enunciates the responsibilities of all the parties in a land transaction. A provision of that act permits parties in all obligations secured by real estate to contract for and receive any finance charge and additional interest. The act recommends that a maximum finance charge be established for certain "protected parties," e.g. a person giving a security interest in land on which he resides or intends to reside. An outline of the statutory scheme is found at Appendix O-4.

Ms. Rebecca Bevacque, in the absence of Mr. Hirsch, was recognized to present the results of the Attorney General's research as to workable interest law statutes in other states. Mr. Hirsch's memorandum to the Committee is found at Appendix P. She said that Attorney Generals' offices in the other states had been contacted on the usefulness of their statutes. About three fourths of the

states replied. These replies were placed in three groups. The first group containing such states as Rhode Island, Nevada, Hawaii and New Mexico had very simple statutes which did little more than set out broad and general maximum rates. These states had very few of the complex substantive provisions found in North Carolina's law. Ms. Bevacque said that the second group consisted of those states which had adopted the UCCC. She stated that the comments from those states were generally favorable. Some of the states recommend the adoption of the revision of the UCCC proposed in 1974.

The third group Ms. Bevacque explained consisted of one state--Maryland. There the interest statutes had some complexity but were well organized and detailed. Maryland revised its statute in 1977 into six parts. The first part is labelled "interest" and includes the following maximum rates of interest: 8% on contracts, 10% on real estate with contractual limitations, 12% on unsecured installment contracts, and unlimited rates for Federal agencies and corporations. That part describes fees and sets penalties for usury. Maryland has an extensive definitional section and the term "interest" has a similar meaning to "annual percentage rate" in the Federal Truth-in-Lending Act. The second part governs rates of $500 on small loans and is similar to our consumer finance act. The third section establishes consumer loan rates for loans of $3,500 or less. The fourth part deals with second mortgage loan rates. The fifth and sixth parts set up retail credit and installment rates, respectively.

Representative Johnson suggested that the Committee might wish to obtain the Attorney General's opinion on the UCCC.

Representative Bell suggested that the Chairmen be empowered to set up two drafting subcommittees, one to consider and propose changes to Chapter 24 and related interest laws and another for Chapter 54 and 54A concerning savings and loan associations.

Upon the suggestion of Representative Johnson and Mr. Bodenheimer it was requested that the subcommittees be instructed that the first priority be given to a clarification of the interest statutes.

December 1, 1978

For its last meeting the Legislative Research Commission's Committee on Credit and Interest Laws invited representatives of two state agencies -- the Banking Commission and the Savings and Loan Division of the Department of Commerce -- to outline to the Committee statutory proposals which these agencies plan to make to the 1979 General Assembly. The reports of the representatives of the two agencies were to be only for informational purposes for the Committee's members.

Mr. James Currie, the Commissioner of Banks, discussed the recommendations of the Banking Commission's Special Committee to Study State Banking Laws and Practices (hereafter referred to as the Special Committee). He distributed copies of that Committee's report to the members of the Committee on Credit and Interest Laws (a copy of that report can be found in the records of this Committee in the Legislative Library).

The Special Committee recommended in G.S. 53-92 regarding the constitution of the Banking Commission that the statute be amended to a minimum of five bankers on the Commission. Mr. Currie informed

the Committee that the Banking Commission withdrew that proposal on November 30, 1978.

The Special Committee recommended that the present expiration date of G.S. 53-99, dealing with confidentiality of banking records, be removed. Mr. Currie said that the North Carolina Statute tracks the provisions of Federal law. The question of confidentiality of banking records is to be taken up by the Banking Commission on January 24, 1979.

The third proposal is to amend G.S. 53-122 to permit increased assessments to be levied on regulated banks to support the work of the Banking Commission. He noted that these rates had not been changed since 1921.

The Study Committee recommended that G.S. 53-1 be amended to permit banks to include a portion of their long-term capital debentures or notes on their preferred stock in their capital base when computing limitations in investments so as to put state-chartere banks on a more equitable basis with national banks.

The Study Committee proposes a regulation, an addition to 4 NCAC 3C .1102, giving power to the Banking Commission to restrict the declaration of cash dividends for banks having capital debentures or notes outstanding which might have an adverse effect on depositors or other creditors of the bank.

G.S. 53-80 is proposed to be amended to base qualification to be a bank director on ownership of a minimum of $1,000 book value of stock rather than on ownership of a minimum of $500 par value of stock so that banks will have a larger group of stockholders from which to choose directors.

G.S. 53-91 is suggested to be amended to raise the maximum amounts which officers and employees of a bank may borrow from that bank.

Mr. Currie said that under a proposed change to G.S. 53-104.1 authority would be granted to the Commissioner of Banks to examine bank affiliates, including bank holding companies.

The Study Committee proposes amendments to G.S. 53-105 and 53-107 which will allow additional time during which banks are to prepare reports called for by the Commissioner.

Mr. Currie outlined to the Committee the proposal which would amend G.S. 53-108 to no longer require annual filing of the bank's list of stockholders in the Office of Commissioner of Banks. Representatives Cook and Bell, and Senators Davis and Daniels expressed concern that the present annual filing requirement is not burdensome and should be continued.

The last major Study Committee proposal mentioned by Mr. Currie was a change to the regulations to require that banks issuing letters of credit maintain records which would aid the examiners of the Commissioner of Banks to determine the contingent liability of the bank.

Mr. Currie in closing noted that state-chartered banks may only charge 9% interest on term loans of less than $100,000 whereas Federally-chartered banks may charge 1 1/2% over the Federal discount rate.

Mr. William L. Cole, the Administrator of the Savings and Loan Division of the Department of Commerce, appeared and stated that his division's specific proposals to clarify the provisions of G.S. Chapter 54 and 54A are still under review. Mr. Cole's statement is contained at Appendix Q.

The Committee discussed the question of interlocking directorships in lending institutions. Representative Cook felt that interlocking directorships lead to conflicts of interest and that they should be prohibited. In smaller communities, the Committee members pointed out, there is difficulty in finding people having expertise in lending matters to serve as directors and that the local situations need to be considered by the regulatory agencies in formulating rules regarding interlocking directorships.

RECOMMENDATIONS

After a review of the information presented to it during its meetings, the Committee on Credit and Interest Laws makes the following recommendations:

1. The Banking Commission should investigate the possibility of requiring that reports be made on the refinancing of and insurance premiums on loans made by consumer finance companies. The Committee believes that the General Assembly needs greater information on the refinancing of and insurance premiums on these loans than is presently being collected.

2. The General Assembly should not repeal that provision of the present G.S. 53-108 which requires that a bank file yearly with the Banking Commission a list of its stockholders. The Committee on Credit and Interest Laws opposes that part of the proposed amendment by the Banking Commission's Study Committee on State Banking Laws and Practices to G.S. 53-108 concerning the repeal of the annual listing requirement of stockholders by banks because that listing gives a readily-available check on insider transactions and a cross-check with public officials' economic disclosure statements.

   The Committee on Credit and Interest Laws supports the Study Committee's second proposed amendment to G.S. 53-108, to require that a list of the stockholders of the parent corporation of which a bank is a wholly or majority-owned subsidiary would be filed annually with and could be examined at any time by the Commissioner of Banks.

The Committee also urges the Banking Commission to change the word "stockholder" to the word "shareholder" in G.S. 53-108 and throughout G.S. Chapter 53, so as to conform with the practice of G.S. Chapter 55, the Business Corporation Act.

3. The Committee suggests that the 1979 General Assembly revise the maximum interest rate allowable under G.S. 24-1.1(3) on term loans of $100,000 or less to a more realistic level. The Committee notes that in recent weeks the cost of money has increased greatly, to more than 11% in the case of the Federal Reserve's discount rate. Under 12 U.S.C. §85, a federally-chartered bank may charge interest at the rate allowed by state law or at one percent above the discount rate, whichever is greater. The Committee feels the increasing cost of money forces state-chartered banks to stop renewing loans made under G.S. 24-1.1(3) and places state-chartered banks at a comparative disadvantage to federally-chartered banks.

A P P E N D I C E S

Appendix A

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

MEMBERSHIP

1977-1979

Cochairmen:

House Speaker Carl J. Stewart, Jr.
Gastonia

Senate President Pro Tempore John T. Henley
Hope Mills

Members:

Representative Chris S. Barker, Jr.
New Bern

Representative A. Hartwell Campbell
Wilson

Representative John R. Gamble, Jr.
Lincolnton

Representative H. Parks Helms
Charlotte

Representative Lura S. Tally
Fayetteville

Senator Dallas L. Alford, Jr.
Rocky Mount

Senator Luther J. Britt, Jr.*
Lumberton

Senator Cecil J. Hill
Brevard

Senator Robert Byrd Jordan, III
Mt. Gilead

Senator Vernon E. White
Winterville

*Deceased: Replaced by Senator Russell Walker in 1978

APPENDIX B

Resolutions—1977

H. R. 1283 **RESOLUTION 90**

A JOINT RESOLUTION DIRECTING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY CHAPTER 24 OF THE GENERAL STATUTES AND RELATED CREDIT AND INTEREST LAWS, AND TO DETERMINE THE FEASIBILITY OF ESTABLISHING ONE SUPERVISORY AUTHORITY OVER ALL LENDERS IN NORTH CAROLINA.

Whereas, the interest laws of North Carolina have never been examined as a whole; and

Whereas, these laws are important to the North Carolina public, but are often ambiguous and overly complex; and

Whereas, a thorough examination of these laws, and of the regulatory system concerning the granting of credit in North Carolina would be of great benefit to the public of North Carolina;

Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

Section 1. The Legislative Research Commission shall study credit and interest laws in North Carolina including, but not limited to, consideration of:

(1) The present coverage of the credit laws.

(2) The effect of these credit laws upon lenders, borrowers, and the general public of the State of North Carolina.

(3) Methods by which present credit laws can be clarified, including but not limited to a study and possible rewrite of the various interest provisions and fees under Chapter 24 of the General Statutes.

(4) Ways in which credit laws can be improved to the benefit of the North Carolina public.

(5) Ways in which the regulation of lenders in North Carolina can be improved to the benefit of the North Carolina public, including consideration of the types of reports which should be made by lenders and consideration of one supervisory agency to regulate all lenders.

(6) Ways in which regulation of lenders of North Carolina can be better organized toward efficiency in government.

The commission shall report to the 1979 General Assembly.

Sec. 2. This resolution shall become effective upon ratification.

In the General Assembly read three times and ratified, this the 1st day of July, 1977.

APPENDIX C

LEGISLATIVE RESEARCH COMMISSION

Committee on

CREDIT AND INTEREST LAWS

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Senator Vernon E. White, LRC Member P. O. Box 41, Winterville, N. C. 28590	919-756-2920
Representative E. Graham Bell, Cochairman 318 South Street, Gastonia, N. C. 28052	704-867-5391
Senator Melvin R. Daniels, Jr., Cochairman 604 East Main Street, Elizabeth City, N. C. 27909	919-338-2141
Mr. Charles Barbour # 16 3775 Guess Road, Durham, N. C. 27705	919-781-0217
Mr. F. P. Bodenheimer President, Stockton-White and Company P. O. Box 2889, Raleigh, N. C. 27602	919-755-7510
Representative Harold J. Brubaker Route 3, Box 200, Asheboro, N. C. 27203	919-629-4202
Representative Ruth E. Cook 3433 Churchill Road, Raleigh, N. C. 27607	919-787-6528
Senator E. Lawrence Davis P. O. Drawer 84, Winston-Salem, N. C. 27102	919-725-1311
Representative Joseph E. Johnson 4300 Six Forks Road, Raleigh, N. C. 27609	919-782-3911
Senator Robert B. Jordan, III P. O. Box 98, Mt. Gilead, N. C. 27306	919-439-6121
Representative Benjamin D. Schwartz 205 Forest Hills Drive, Wilmington, N. C. 28401	919-762-7780
Representative William Marcus Short 220 West Friendly Avenue, Greensboro, N. C. 27400	919-273-8276
Mr. Wilson F. Yarborough, Sr. 1707 Raeford Road, Fayetteville, N. C. 28305	919-484-7380

APPENDIX D

LIST OF WITNESSES APPEARING BEFORE THE COMMITTEE

Attorney General Office
Department of Justice
Mr. Alan S. Hirsch, Assistant Attorney General

Banking Commission
Department of Commerce
Mr. John R. Tropman, Past Commissioner of Banks
Mr. James Currie, Commissioner of Banks

Credit Union Division
Department of Commerce
Mr. Roy D. High, Administrator

Savings and Loan Division
Department of Commerce
Mr. W.L. Cole, Administrator

Mecklenburg County Legal Aid Society
Mr. Robert Gage, Staff Attorney

Mortgage Bankers Association of the Carolinas, Inc.
Mr. Lindsay C. Warren, Jr., Counsel

North Carolina Bankers Association
Mr. John R. Jordan, Jr., Legislative Counsel
Mr. Robert Price

North Carolina Bar Association
Commercial Banking and Business Law Committee
Mr. John R. Jernigan

North Carolina Consumers'Council, Inc.
Mr. Richard Clark

North Carolina Consumer Finance Association
Mr. C.N. Harkey, President

North Carolina Credit Union League
Mr. John Johnston, Managing Director

North Carolina Home Builders Association
Mr. J. Ray Sparrow, President

North Carolina Savings and Loan League
Mr. Herbert Wentworth, President
Mr. Theo Pitt

North Carolina State Employees Association
Mr. W. E. Greer, Chairman

Orange-Chatham Legal Services
Mr. Philip A. Lehman, Staff Attorney

State Treasurer
Hon. Harlan E. Boyles

Wake County Legal Aid Society
Mr. Leonard G. Green, Associate Attorney

North Carolina Legislative Research Commission

Committee on Credit and Interest Laws

January 20, 1978, 10:00 A.M.

Remarks of Robert Gage, Legal Aid Society of Mecklenburg County

Mr. Chairman, members of the Committee, and invited guests:

My interest in the Committee's proceedings is that of a lawyer who represents low-income consumers. I practice law with the Legal Aid Society of Mecklenburg County, in Charlotte. Daily I represent low-income consumers in credit matters governed by the provisions of Chapter 24 and the other credit and interest laws. I have come this morning to speak particularly for my clients, but, I hope, for all low-income consumers in North Carolina.

The credit and interest laws have their origin in the Bible. There was a biblical prohibition on taking any kind of compensation for the loan of money. Deuteronomy 23:19-20; Luke 6:35. This carried over into Old English law. 2 Black's Commentaries 454. As modern commerce developed, the absolute prohibition in taking interest became quite impracticable; the results of the biblical proscription are still with us, however, in that our present interest laws were all formulated as exceptions to early restrictions.

The first laws on interest in our country stated simply that all obligations which carried more than the maximum stated lawful rate would be "utterly void." 12 Anne c. 16. These laws were superceded in North Carolina by the Act of 1876-77, which remains largely intact in the statutes which the Committee is now called upon to revise.

While the law remains the same, its meaning has been turned around. Now, instead of specifying the maximum lawful rate, the basic interest law specifies the so-called "legal rate," which is the rate which applies unless the parties have agreed otherwise, G.S. §24-1, and a host of collateral statutes specify the circumstances under which the parties may agree otherwise.

The interest legislation which we now find on the books embodies what we might call the "rule of exception." As modern business developed, the different parts of the business community

came to the legislature one by one and said "we are in an impossible situation, we cannot do business with these restrictions, we need a law allowing us to carry on our activities." For many good reasons different laws were created at different times to fit circumstances which arose. Our present legislation is a pastiche of laws, a collection of exceptions to the general rule set forth by the maximum lawful rate statute.

I might characterize the formation of the present system as conditioned by a "what about me?" syndrome. People came to the legislature and said, "what about me? I need to do business, too," and a law was passed allowing that faction of the business community to do its business.

However, now has come the time to consolidate and revise all the laws created as different factions said "what about me?" Now we are here to look at the question "what about the people of North Carolina?" and "what about the business community as a whole?" What can we do about providing a flexible, comprehensible system of laws for everybody? We must look at everybody at once, and not just at the people whose ox happens to be gored at the moment, who press their own interests most strongly. We have a unique opportunity to study this question and the Committee has the unique opportunity and responsibility to provide uniform, balanced legislation to the people of this State.

The Committee also has, I think, a particular responsibility, which it must feel deeply. The interests of consumers, and especially low-income consumers, are not represented on the Committee as strongly as the interests of the financial institutions. This is largely for reasons of expertise. The members of the Committee associated with financial institutions make it a profession to study credit and interest laws, and have great knowledge about these laws. I believe that each member of the Committee, each legislator, will feel a particular responsibility to use this knowledge to represent low-income consumers and all the consuming public in the proceedings of the Committee.

The first recommendation that I make is the simplest, and perhaps the most far-reaching. It has to do with uniform terminology. One of the results of the peculiar piecemeal development of the interest laws was that we developed a wide variety of names for charges which borrowers pay to lenders: "interest", "loans fees", "rate of charge", "assumption fees", "prepayment fees", and so on. These charges go to the lender to cover his costs of obtaining the money wholesale, packaging it and selling at retail. Fees are added to fees and, in one instance I'll mention later, fees are figured as a percentage of...fees. Not all sellers of money can make the same charges. The same money in a different package, tied with different strings, but secured by the same collateral, is subject to numerous different charges.

Obviously the Committee is ready to do something about this. That's why the Committee has been called. Probably the Committee is ready to do something rather dramatic.

I propose that all charges be expressed as interest. This would involve defining the principal amount of the loan as the amount of credit extended to the borrower, and it would involve expressing all allowable charges as a simple, actuarially-computed interest rate based on the amount of credit extended.

Separate provision could be made for various insurances, involved in many loans, and for reasonable charges paid to third parties for necessary services.

I believe that this proposal would in most instances make the stated interest rates the same as the Federally-defined "APR", or Annual Percentage Rate. This will make it a lot easier for lenders and borrowers alike to track the cost of credit.

The implications of adopting uniform terminology for all interest rates are rather far-reaching. I think that it would probably affect just about every statute on the books right now if all charges were expressed as interest, and would necessitate a complete reexamination of all the laws. That, of course, is

what this Committee is here to do.

The effect of adopting the uniform terminology for all charges would be to provide both lenders and borrowers instantly with the true cost of credit. Competition in the retail money marketplace would be strengthened and the lender with the most efficient operation would have the clear competitive edge it deserved.

Let me discuss one implication of the uniform expression of interest rates. This would be in the area of second mortgage lending. This is the area that affects low-income consumers most. Of the low-income consumers I represent, many are renters, but some of them are trying desperately to own their own homes. They have a hard time buying a home and an even harder time keeping their home once they have bought it.

The second mortgage lending industry extends to these people loans which are secured by their houses. Second mortgage loans are often extended as "bill-consolidation loans." One of the wage-earners in the consumer family becomes sick or loses his or her job, and they are no longer able to keep their bills current and fall into default. They fact strenuous collection action on hospital bills, furniture bills, small loan payments or car payments. To stem the tide of phone calls, letters, other collection activity and legal process the debtor takes out a second mortgage loan.

Now, instead of facing executions on specific items of personal property, the consumer, if he still cannot keep his payments current, faces the loss of his family's home. This is certainly not an argument to do away with second mortgage lending; this would be preposterous. It is a reason, however, to look at second mortgage lending from the point of view of someone who is struggling to buy and to keep a house.

The bill consolidation loan, offering seemingly easy and possibly illusory relief to the consumer in trouble, is just one of the pitfalls of second mortgage lending which face the low-income borrower. Another is found in the fact that certain real estate operators will scout the market, buy second mortgage

notes at a discount and then hover over the low-income borrower waiting for a chance to foreclose and move in.

I have one client who wanted to be here today, but could not leave his job. One day he answered a knock on his door to greet a man who demanded to enter, saying, "I'm here to look at my house." My client said, "But this is my house," and the intruder replied, "Not for long." The stranger was a real estate operator who had bought the loan cheaply and was anticipating early foreclosure. It didn't happen that way; my client was able to get a better-paying job and bail himself out, at least for the time being.

There is also a category of second mortgage lenders who is connected with a home-improvement business. Often the lender and the home-improvement contractor will have the same office and the same personnel, being separate only on paper. The lender makes loans under Article 2 of Chapter 24 to finance his sale of, for example, an aluminum siding job or baseboard heating system to the consumer. High pressure sales tactics and misrepresentation as to the terms of the obligation or the fact that the home will serve as security for the loan are common. The quality of the work and goods is frequently deficient. A default in payment will lead to the loss of the home. One aluminum siding contractor/lender acquired twenty-eight pieces of property in Mecklenburg County last year.

We have two sets of second mortgage laws in this State. Some second mortgage lenders are highly favored with respect to others. In the example I handed out, if you will note where the arrows point, you will see that Lender A and Lender B both lend an amount financed of $4,000. They both get back $5,931. (There's a difference of 29 cents there; I don't know where that comes from.) Lender A, however, has to wait seven years to get his money back; Lender B gets his money back in 60 months.

Why is this? You will notice that the APR, or Annual Percentage Rate, which Lender A is earning on his money

is 12%. This is a loan, if I am not mistaken, under G.S., §24-1.2B. Lender B is earning on his money an APR of 16.75%. This a loan under Article 2 of Chapter 24.

Why is Lender B collecting at 16.75% and Lender A only at 12%? If you look in Article 2 of Chapter 24, you will notice that the interest rate specified there is 12%, the same as in G.S. §24-1.2B. However, also specified there is what is defined as the "rate of charge". Lenders under Article 2 of Chapter 24 are allowed to make up-front charges of up to 10% of the "principal amount" of the loan, as "principal amount" of the loan is defined in that statute. This is designed to compensate the lender for fees paid out to third parties for appraisal, for title-search or for other purposes. But the "rate of charge" may be charged, up to a $500 maximum, whether or not the money is disbursed to third parties. Any of the "rate of charge" money that is not disbursed to third parties may be simply placed in the treasury of the lender.

I would like for you to note a peculiarity of the rate of charge, as much as a matter of form as anything else. It's figured as 10% of the principal amount, again, as that term is defined. The principal amount is defined to include the rate of charge. So the rate of charge is 10% of the principal amount, and the principal amount includes the rate of charge! This sounds like a Catch 22; the rate of charge is defined as a percentage of itself and something else. If you do the arithmetic, the rate of charge comes out of 11.11% of the amount of credit extended.

The nominal rate of Article 2 loans is 12%; what is the actual rate? Let me give you another example. I think that this is probably near the high end: If $1500 credit is extended, repayable over 36 months, the Finance Charge will be $492.90 and the APR will be 19.5%.

This on a loan secured by a deed of trust on real property. It is a loan which presumably would not have been made if there were not enough equity in that real property fully to com-

pensate the lender in the event of a default. In addition to the rate of charge, Article 2 lenders can collect late charges. As far as I can determine, these are the only lenders under Chapter 24 that are allowed to collect late charges.

The high cost of these loans is a distinct problem for the borrowers, and may contribute to the default rate. What are the problems of the lender under Article 2? I think that they have certain Truth in Lending disclosure problems, and all the contracts that I have seen bear this out. The rate of charge has been inaccurately treated by some lenders; it is difficult to disclose this properly under the Truth in Lending regulations. Some lenders use the wrong terminology or make the disclosures in such a way as to violate the Federal prohibition on inconsistent state disclosures within the Federal disclosure statement. Also, Chapter 24, Article 2 fails to provide for a rebate of unearned finance charges. It is clear that this rebate is required by the case law of North Carolina, yet sometimes the lenders fail to disclosure the method of rebate. This seems to derive from the fact that the method of rebate is not spelled out in the statutes, and leads to another Truth in Lending disclosure problem.

Finally, I might point out that anybody picking up T.V. Week on January 15 and looking at the two ads four pages apart is going to be confused, and perhaps somewhat upset that the rates are so different. In any case, if he looks at what he will be paying he will certainly go to Lender A instead Lender B.

What if a borrower or the lender has a problem with a transaction under Article 2, the second mortgage statute. Where can he go? I don't know. Apparently no authority regulates loans made under this statute. I would recommend that the Banking Commission be given the same authority to license and regulate all second mortgage lenders. If some second mortgage lenders are subject to regulation by the Banking Commission, I don't see why they all should not be subject to that regulation. This would include perhaps both licensing and record keeping requirements, both within the scope of this Committee's study. It's instructive, perhaps, to compare the lack of regulation of second mortgage lend-

ing with the regulation of small loan companies, which is entrusted to the Consumer Finance Administrator within the Banking Commission. In many cases we have the same personnel involved, because the business of second mortgage lending is very often carried out in the same office and by the same people as the small loan business; the borrowers are, by and large, the same people. In other words the transactional environment is just the same. And on many loans, especially in the 1,000 to 3,000 dollar range, the interest rates are comparable. They are just as high or almost as high under Article 2 as they are under the small loan statute: 18 to 20%.

Now, the only penalty provision in Article 2 of Chapter 24 is that which makes it a misdemeanor to violate this statute. This puts enforcement responsibility with the local district attorney. I think that it is unrealistic to expect that the local D.A., with the crush of criminal business which he has, is going to be able to devote any resources at all to making sure that lenders abide by the terms of the statute as it is now written. We would recommend the addition of civil penalty provisions to this act, similar to those which are set forth at the end of the Retail Instalment Sales Act. This would make provision for private enforcement at no cost to taxpayers.

I have three other proposals in slightly different areas. I think that we can all agree that G.S. §§24-1.1 through 1.3 need some work. These are the statutes which set most of the interest rates. It would be probably be most useful to reorganize them according to class of collateral, so that the loan officer or attorney seeking to advise his customer or client as to the possibilities of a loan under this statute, would be able to go directly to the applicable provision, depending upon the transactual situation as it presented itself. I have spoken with several bank counsel and loan officers about the situation. I think that they agree that a transactionally-oriented statute would be the most useful for them.

I would recommend that Chapter 24 be narrowed slightly in focus. It is, after all, an interest statute that deals with loans, and I think that it would be useful and a positive clarifying

step, to take sale credit out of Chapter 24 and put it with the rest of the sale credit provisions in the Retail Instalment Sales Act. This would affect the revolving sale credit provisions of G.S. §24-11.

Finally, I would propose that all major interest rate provisions be put into Chapter 24, simply for the purpose of providing easy reference and access to anybody who wants to know how much it costs to borrow money. Somebody is not going to know before they go looking for a loan exactly what statute they are going to fit under. They are going to want to know how much it's going to cost them. This proposal dovetails with the proposal to express all interest charges as interest rates in a manner similar to the Federal APR, and would affect, for example, the placement and the manner of expression of the small loan interest rates. These rates are now expressed as monthly rather than annual percentages, and are found in Chapter 53 of the General Statutes. They could be referenced in Chapter 53, expressed in Chapter 24 alongside other much-used interest rates, and expressed in the same terminology.

I certainly appreciate the chance given me to come here this morning, and would be glad to answer any questions which arise now or in the future. That is, if any of the Committee has a question.

(Mr. Johnson:) I agree with you on terminology. Wouldn't it be best for us to adopt the same terminology as is found in Title I of the Consumer Protection Act, or the Truth in Lending statute? In other words, when that statute talks in terms of a finance charge, shouldn't we use the word finance charge, or nearly as possible use the same terminology so that it would be consistent? Would you consider that a good move?

(Mr. Gage:) I think that it would be one of the most important things that the Committee could do.

(Mr. Johnson:) Second Question: When you cited the nineteen-point-something percent APR, you did it on the assumption that there was nothing paid to anybody on the outside. In a normal second loan transaction, you would normally, most prudent lenders

would get an attorney to check the title, etc. Your example of nineteen-plus percent did not take that into account, is that correct?

(Mr. Gage:) That is correct. I would like to explain my answer. The amounts paid to third parties, such as the attorney who checks a title, are usually not differentiated from the amount of the rate of charge which is simply kept by the lender and effectively added to interest. This latter amount is most often the major part of the rate of charge. The APR as disclosed cannot differentiate, see 12 CFR 226.4(a). So it is correct to include this charge in the APR when you are using that term.

(Mr. Bell:) Any further questions? Thank you very much.

PRESENTATION TO LEGISLATIVE RESEARCH COMMISSION

January 20, 1977

Harlan E. Boyles, State Treasurer

I would first like to express my appreciation to the Committee for the invitation to appear before you today.

There is public concern about the operation of banking institutions in this State. Governor Hunt has enumerated some of these concerns, and the General Assembly has taken cognizance through adoption of Resolution 90.

The Banking Commission is and has been well aware of these concerns. At its regular meeting on September 21, 1977, the Commission by unanimous Resolution, directed me, as its Chairman, to establish a special Study Committee for the purpose of reviewing and updating studies of the banking laws of the State of North Carolina made during the 1960's, with a view to recommending revisions of the laws if appropriate.

Acting pursuant to the Resolution, I have appointed the Committee to study North Carolina's Banking Laws ("Study Committee"). Twenty-two persons were selected to serve on the Committee, and I serve as Chairman. Mr. John Tropman, Commissioner of Banks, is Secretary to the Committee and provides administrative support.

The members of the Study Committee are highly qualified to serve both by reason of their training and their experience. They are from every geographical area of the State and many diverse occupations and professions. Represented on the Committee are

both Houses of the General Assembly, State and local governments, the legal profession, education, banking institutions, and the business community.

While both the banking laws and the barks of this State have served us well in the past, we recognize that society and its institutions change and that the laws must keep pace. The Committee has been charged, therefore, to conduct an in-depth study of the banking laws as they now exist and to report its findings and recommendations to the Banking Commission.

Four subcommittees have been created to facilitate the in-depth study. These suggested areas of study cover approximately those recommended by Governor Hunt, but are perhaps somewhat broader in scope. The study areas are, respectively:

(1) Current laws and regulations and proposed legislation;

(2) Fiscal operations of the State Banking Commission;

(3) Enforcement of State and Federal banking laws; and

(4) Appointment of the Commissioner of Banks and members of the State Banking Commission.

The study areas have been presented only as guidelines to the subcommittees, which may select additional areas for review, if they so desire. In fact, study areas have already been broadened to cover confidentiality of records of the Commissioner of Banks and re-indexing the State's Banking Laws.

While the areas for consideration by the Study Committee are certainly less broad than those set forth in Resolution 90 for study

by the Legislative Research Commission, the concentration of the Study Committee on the Banking Laws is probably more intensive.

We believe that this will result in a detailed, comprehensive, and coordinated review and critique.

An organizational meeting of the Committee was held on December 12, 1977, and each of the subcommittees met on December 13. Each of the subcommittees has scheduled a meeting in the near future, with the first to be this coming Monday, and each has indicated at least a general intent to meet monthly until the work is completed.

I have provided, for your information, copies of the membership of each subcommittee and of the study areas suggested to each. That the subcommittees have taken their responsibilities seriously is evidenced by the fact that we have already received considerable feedback from them in the way of various questions, suggestions, and tentative proposals.

When each subcommittee has completed its task, it will report its findings and recommendations to the full committee. Following consideration of the subcommittee reports, the Study Committee will prepare and present its report to the Banking Commission.

Upon completion of the report to the Banking Commission, the Study Committee will be happy to provide copies to the Legislative Research Commission. As Chairman, I would like to extend an invitation for representatives of the Legislative Research Commission to attend meetings of the Committee and its subcommittees. Representatives of the Study Committee would also be pleased to attend the deliberations of the Legislative Research Commission, if you deem it desirable.

It is my conviction that the Study Committee, by virtue of he knowledge, experience, and dedication of its members, will roduce recommendations to the Banking Commission which will serve nd protect the interest of the public while preserving the anking industry as a strong and stable institution, ready to erve the State and its citizens.

Thank you very much for the opportunity to make this resentation. If there is any way in which the Office of the reasurer, the Banking Commission, or the Study Committee can ssist you in your deliberations on similar matters, please let s know.

Special Committee to Study the State's Banking Laws

Harlan E. Boyles, Chairman

John Tropman, Secretary

I. Subcommittee for the review of current laws and regulations and proposed legislation:

E. D. Gaskins, Chairman
Robert G. Barr
D. M. Faircloth
Hon. W. M. Lentz
Joseph E. Sandlin

II. Subcommittee on fiscal operations:

Hon. Henry Bridges, Chairman
T. N. Brafford
Sen. Harold W. Hardison
John B. Lewis, Jr.
W. H. Stanley

III. Subcommittee on the enforcement of State and Federal banking laws:

Richard A. Wood, Jr., Chairman
Mrs. Becky Hundley
Huger S. King, Sr.
Charles F. Myers, Jr.
R. Douglas Powell

IV. Subcommittee on appointments:

J. Ruffin Bailey, Chairman
Rep. E. Graham Bell
Charles E. Knox
Dr. Prezell Robinson
Edwin Pate
Ms. Melba G. Smith
W. L. McLaurin

A R E S O L U T I O N

(UNANIMOUSLY ADOPTED BY THE STATE BANKING COMMISSION AT ITS REGULAR MEETING ON WEDNESDAY, SEPTEMBER 21, 1977)

WHEREAS, recent publicity concerning the regulation of the banking industry has aroused much interest in the matter, and

WHEREAS, such is the matter of continuing surveillance by the Banking Department and this Commission; and in recognition of the responsibility of this Commission to study and review bank regulation procedures;

NOW THEREFORE, this Commission directs the Chairman to establish a committee composed of members from the State Banking Commission and/or other persons of his choice for the purpose of reviewing and updating the detailed study of the banking laws of the State of North Carolina made by the State Banking Commission in 1966 and directs that the special committee so created make its report to the Chairman and to the full membership of this Commission.

Adopted this the 21st day of September, 1977.

The State Banking Commission, a governing and policy making body, has supervisory authority over North Carolina's State-chartered banks, consumer finance licensees operating under Article 15, Chapter 53 of the General Statutes and pre-need burial trust funds as defined under Article 7A, Chapter 63 of the State statute. It is the responsibility of the Banking Commission to insure that North Carolina's State-chartered banks are financially sound and provide needed services to the public.

As of December 31, 1976, there were 64 State-chartered banks operating 835 banking offices with total deposits of $4,974,561,000 and 692 consumer finance licensees with total assets of $463,949,100 actively supervised by the State Banking department. Also operating in North Carolina were 28 nationally chartered banks with 787 banking offices and total deposits of $8,159,520,000.

In addition to the above, the State banking department has granted 194 pre-need burial and 9 sale of checks licenses and licensed 24 State trust departments and 15 National trust departments.

Attached for your information is a listing of the banks operating within North Carolina arranged by deposit size as of year end 1976. The listing has been adjusted to reflect the merger of two State-chartered banks with National banks.

	DEPOSITS
& Tr Co , Winston Salem	$2,610,750,000
Carolina National Bank, Charlotte	2,369,208,000
National Bank, Charlotte	1,480,962,000
Northwestern Bank, N. Wilkesboro	1,057,376,000
First-Citizens Bk & Tr. Co., Raleigh	1,028,671,000
Banking and Tr. Co., Wilson	420,769,000
Southern National Bank, Lumberton	338,505,000
Central Carolina Bank, Durham	315,738,000
Planters National Bank, Rocky Mount	265,672,000
Peoples Bank & Trust Co Rocky Mount	251,929,000
Bank of North Carolina, Jacksonville	251,807,000
Waccamaw Bank & Tr. Co., Whiteville	232,560,000
First Nat'l Bk of Catawba Cty., Hickory	184,255,000
Independence National Bank, Gastonia	182,789,000
Commerce Bank & Tr. Co., Monroe	167,021,000
Security Bank and Tr. Co., Salisbury	118,967,000
The Carolina Bank, Sanford	111,658,000
High Point Bank & Tr. Co , High Point	86,312,000
The Bank of Asheville, Asheville	72,538,000
Carolina First National, Lincolnton	66,103,000
The Fidelity Bank, Fuquay-Varina	65,562,000
Lexington State Bank, Lexington	64,954,000
Cabarrus Bank & Tr. Co., Concord	62,695,000
Southern Bank & Tr. Co , Mount Olive	60,653,000
First National Bank, Shelby	52,557,000
Piedmont Bank & Tr. Co , Davidson	46,660,000
Edgecombe Bank & Tr. Co , Tarboro	46,495,000
First National of Randolph Co., Asheboro	43,702,000
First National Bank, Albemarle	41,091,000
Bank of Granite, Granite Falls	39,853,000
First National Bank, Charlotte	38,556,000
The First Carolina Bank, Engelhard	37,825,000
First National Bank, Reidsville	37,703,000
Mechanics & Farmers Bank, Durham	37,381,000
Piedmont Bank & Tr. Co., Winston-Salem	35,814,000
Cape Fear Bank & Tr. Co , Fayetteville	32,351,000
The Bank of Belmont, Belmont	30,147,000
First Union National Bank, Oxford	28,981,000
Rockingham County Bank, Rockingham	26,916,000
Peoples Bank Catawba	26,394,000
Gates Bank & Tr Co , Gatesville	26,288,000
First National Bank, Concord	25,204,000
Merchants Bk , Granite Quarry	23,656,000
Bank & Tr Co , Charlotte	23,419,000
of Raleigh, Raleigh	23,335,000

BANK	DEPOSITS
46. Peoples Bank of N C., Madison	$22,683,000
47. The First National Bank, West Jefferson	22,636,000
48. Community Bank of Carolina, Greensboro	22,443,000
49. First State Bank, Winterville	22,296,000
50. First National Bk. of Anson Co., Wadesboro	22,053,000
51. Farmers Bank of Sunbury, Sunbury	19,760,000
52. Citizens National Bank, Concord	19,313,000
53. United Citizens Bank, Winston-Salem	18,164,000
54. Western Carolina Bank, Asheville	17,510,000
55. The Heritage Bank, Lucama	17,449,000
56. Bank of Pilot Mountain, Pilot Mountain	16,780,000
57. Carolina State Bank, Gastonia	16,556,000
58. Commercial & Farmers Bank, Rural Hall	16,540,000
59. Bank of Montgomery, Troy	15,794,000
60. The Cumberland Bank, Fayetteville	15,542,000
61. Cherryville National Bank, Cherryville	14,569,000
62. Farmers Bank, Pilot Mountain	13,175,000
63. The Bank of Currituck, Moyock	13,133,000
64. Gateway Bank, Greensboro	12,816,000
65. Liberty Bank & Tr. Co., Durham	12,572,000
66. The Bank of Raeford, Raeford	11,894,000
67. Mid-South Bank Sanford	11,669,000
68. First National Bank, Smithfield	11,584,000
69. Metrolina National Bank, Charlotte	11,208,000
70. Yadkin Valley Bank, Elkin	10,897,000
71. Burlington National Bank, Burlington	10,705,000
72. Avery County Bank Newland	9,585,000
73. Merchants & Farmers Bank, Landis	9,500,000
74. Commercial & Savings Bank, Boonville	9,054,000
75. Bank of Four Oaks, Four Oaks	8,930,000
76. Central Savings Bank, High Point	8,868,000
77. The Bank of Candor, Candor	8,276,000
78. Columbus National Bank, Whiteville	8,121,000
79 Guaranty State Bank, Durham	7,912,000
80 Capitol National Bank, Raleigh	7,392,000
81. The Bank of Alamance, Graham	6,771,000
82. Greensboro National Bank, Greensboro	5,784,000
83 Bank of Pine Level, Pine Level	5,359,000
84. Lumbee Bank, Pembroke	4,452,000
85. United National Bank Fayetteville	4,295,000
86. The Bank of Bladenboro, Bladenboro	4,169,000
87. Peoples National Bank, Smithfield	4,012,000
88 Bank of Conway, Conway	3,856,000
89 The Bank of Eden, Eden	3,762,000
90. Morris Plan Industrial Bk , Burlington	2,377,000

ES B. HUNT, JR
RNOR
H R. TROPMAN
ISSIONER OF BANKS
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State of North Carolina
Banking Department

Raleigh

December 30, 1977

Mr. Terry Sullivan
Legislative Research Commission
State Legislative Building
Raleigh, North Carolina 27611

Dear Mr. Sullivan:

This is in response to your letter of December 19, 1977, concerning the Committee on Credit and Interest Laws and its meeting scheduled for Friday, January 23, 1978, at 10 a.m.

I do not wish to appear before the Committee at this time but I will, if you so desire, attend the meeting. I certainly don't want to appear presumptuous but, because of our previous discussions concerning the work of your committee, permit me to respectfully suggest to you some matters that may be helpful in your considerations:

The Committee should be careful not to restrict the use of alternative mortgage instruments or variable rate mortgages.

The Division of Economic Development should be consulted as to the types of reports they need.

The state should not duplicate information available from other sources.

All state-chartered lenders, which are also deposit-accepting organizations plus lenders under the N. C. Consumer Finance Act, are already supervised by divisions which are a part of the Department of Commerce.

Federally chartered lenders which are also deposit-accepting organizations are not subject to supervision by the state but are regulated by appropriate Federal agencies.

There is a great body of other lenders who, in fact, probably make more credit advances than the federally and state-chartered deposit accepting lenders. A partial list includes:

Retail credit
Governmental agencies
Individuals
Security dealers
Insurance companies
Personal and charitable trust funds
Commercial paper
Mortgage bankers
Factors
Pension funds.

Copies of the Banking Commission's organizational chart and receipts and disbursement chart are enclosed.

Very truly yours,

John R. Tropman
Commissioner of Banks

Enclosures

cc: The Honorable Harlan E. Boyles
Chairman, State Banking Commission
325 North Salisbury Street
Raleigh, North Carolina 27611

Mr. Victor Barfield, Assistant Secretary
Department of Commerce
Dobbs Building
Raleigh, North Carolina 27604

STATEMENT OF THE COMMERCIAL, BANKING AND BUSINESS LAW COMMITTEE OF THE NORTH CAROLINA BAR ASSOCIATION

January 16, 1978

My name is John Jernigan and I appreciate the opportunity to appear before you on behalf of the Commercial, Banking and Business Law Committee of the North Carolina Bar Association to express to you our Committee's concern about the current North Carolina law relating to interest. (The members of this Bar Association committee are listed on the attached exhibit.) Even before the passage of Resolution 90 (HJR 1233) by the 1977 Session of the North Carolina General Assembly directing the Legislative Research Commission to study North Carolina's credit and interest laws and regulation of lenders, our Committee had engaged in considerable discussion concerning the undertaking of a thorough study of the current North Carolina interest laws with the view towards suggesting to the North Carolina General Assembly changes which we believe would clarify the present law. I wish to make it clear that from the very outset our Committee's interest in this area has been in removing ambiguities and inconsistencies from the current law and not in making suggestions and recommendations regarding rates or other substantive matters.

Our analysis of Chapter 24 of the North Carolina General Statutes substantiates what we believe to be the general feeling among those who work most closely with the interest laws and that is that there are a number of ambiguities and inconsistencies in the present law making it unnecessarily difficult to apply interest laws to business transactions with the normal degree of certainty. The following examples are typical:

(1) N.C.G.S. 24-1.1 permits the parties to a loan, purchase money loan, advance, commitment for a loan or forebearance to contract in writing for the payment of interest not in excess of a certain amount depending upon the principal amount with the rate of interest increasing with the increase in the principal amount. Does "principal amount" refer to the entire amount of the "loan" or to each "advance" in a construction loan?

(2) N.C.G.S. 24-1.1 defines "business property loan" as a loan, purchase money loan, advance, commitment for a loan or forebearance secured by real property of the borrower which is held or reacquired for sale, lease or use in connection with the borrower's trade, business or profession other than farming or livestock operations and the proceeds of which are to be used for the purpose of either acquiring, refinancing or improving such real property or in connection with such trade, business or profession of the borrower. Is a loan to an individual who regularly invests in real estate but is principally engaged in another business or a profession a "business property loan"?

(3) N.C.G.S. 24-1.1A, which permits the contract rate on home loans secured by first mortgages or first deeds of trust defines the term "home loan" as a loan with a principal amount that is less than $300,000 secured by first mortgage or first deed of trust on real estate upon which there is located or to be located one or more family dwelling or dwelling units. Does this Section apply to loans secured by a deed of trust covering a condominium, apartments or a small hotel?

(4) N.C.G.S. 24-1.1B prescribes the permitted rates on loans to non-profit organizations. What fees, if any, are permitted to be charged to non-profit organizations in connection with a loan as described in that Section?

(5) N.C.G.S. 24-2 provides the penalty for usury defining usury as the taking, receiving, reserving or charging a greater rate of interest than permitted by this chapter or other applicable law. Is a fee interest for the purpose of calculating the rate of interest to determine whether the transaction is usurious?

(6) There are apparent conflicts between the requirements of N.C.G.S. 24-12 et seq., which applies to loans of $7,500.00 or less secured by junior mortgages, and the requirements of the Truth In Lending Act (See paragraph 226.4(a) of Regulation Z).

(7) Does interest per annum mean interest charged on the basis of a 360-day year or a 365-day year?

(8) N.C.G.S. 24-10 provides the maximum fees on loans secured on real property and relates only to N.C.G.S. 24-1.1. Does the existence of this statute preclude the charging of fees under any other section of Chapter 24?

(9) N.C.G.S. 24-1.1 provides as follows:

> "Nothing in this section shall be construed to authorized the charging of interest on committed funds prior to the disbursement of said funds."

Does this section prohibit the charging of a commitment fee if the effect of the charging of such commitment fee would violate the usury statute?

There are numerous questions relating to the scope of Chapter 24 and the relationship of Chapter 24 to other sections of the North Carolina law. The following are a few examples:

(1) N.C.G.S. 24-9 provides that certain loans to corporations organized for profit are not subject to the claim or defense of usury. Why should this statute apply only to corporations and not apply to certain partnerships or sole proprietorships?

(2) As you know, interest rates for all types of loans are not governed exclusively by Chapter 24. For example, the North Carolina Consumer Finance Act, which prescribes the permissible rate of interest on the so-called "small loan" is found in Chapter 53 (N.C.G.S. 53-164 et seq.). Should all statutes regulating permissible interest rates and fees be contained exclusively in Chapter 24?

(3) The relationship between Chapter 24 and N.C.G.S. 25A-1 et seq. (RISA) has apparently caused some confusion. For example, both of these statutes regulate "credit sales"?

As I stated before, the foregoing are simply a few examples of the inconsistencies and ambiguities contained in the interest laws of North Carolina. As practitioners fairly representative of those engaged in this field of law on a regular basis, we believe that the current confusion with the application of Chapter 24

and related statutes to the typical business transaction too often results in parties to a loan and their counsel spending an inordinate amount of time and energy interpreting the statutes applicable to the particular transaction. Too often this result in uncertainty and even resorting to the use of elaborate charts and other schedules developed in an effort to simplify the usage of the applicable statute. We believe that there is sufficient evidence of uncertainty and ambiguity in the current Chapter 24 and related statutes to warrant at this time your consideration of a substantial rewrite of Chapter 24 of the North Carolina General Statutes as well as possibly other related statutes to provide clearer and more usable interest laws. Specifically, in response to your request that we make suggestions both as to what substantive changes should be made in the interest laws and the manner in which the Committee should approach and analyze these changes, we recommend that under the circumstances a drafting committee be appointed by you to redraft Chapter 24 and related statutes in an effort to eliminate ambiguities and inconsistencies and seek overall clarity in the law.

The members of our committee wish to offer our services to this Committee and to work with you in whatever capacity you may deem fit.

Thank you for the opportunity to appear before you today.

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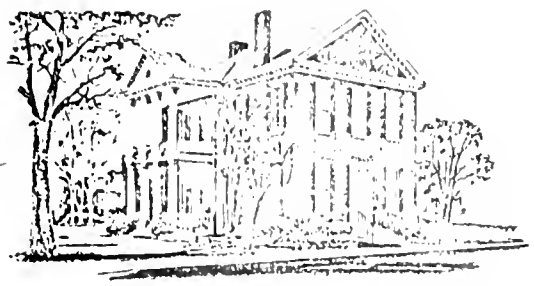
APPENDIX I



State Employees' Credit Union

123 New Bern Avenue P.O. Box 27665 Raleigh, N.C. 27611 (919)733-4050

JANUARY 20, 1978

LEGISLATIVE RESEARCH COMMISSION
LEGISLATIVE BUILDING
RALEIGH, N. C. 27611

GENTLEMEN:

THANK YOU FOR ALLOWING ME TO SHARE SOME IDEAS IN REFERENCE TO RESOLUTION 90 AND HOUSE JOINT RESOLUTION 1283.

CREDIT UNIONS ARE COOPERATIVE NON-PROFIT ASSOCIATIONS INCORPORATED UNDER ARTICLE 14-A OF CHAPTER 54 OF THE GENERAL STATUTES. THEIR PURPOSE IS TO ENCOURAGE THRIFT AMONG THEIR MEMBERS, CREATING A SOURCE OF CREDIT AT A FAIR AND REASONABLE RATE OF INTEREST AND PROVIDES AN OPPORTUNITY FOR ITS MEMBERS TO USE AND CONTROL THEIR OWN MONEY IN ORDER TO IMPROVE THEIR ECONOMIC AND SOCIAL CONDITION.

THERE IS WITHIN THE DEPARTMENT OF COMMERCE A CREDIT UNION DIVISION WHICH IS UNDER THE SUPERVISION OF THE ADMINISTRATOR OF CREDIT UNIONS. THE PRIMARY DUTIES OF THE ADMINISTRATOR ARE AS FOLLOWS:

1. TO PROVIDE INFORMATION IN REFERENCE TO CREDIT UNIONS.
2. TO PROMOTE AND ORGANIZE CREDIT UNIONS, AND GIVE INFORMATION IN REFERENCE TO ESTABLISHING A CREDIT UNION.
3. TO EXAMINE EACH YEAR ALL CREDIT UNIONS ORGANIZED UNDER CHAPTER 54.
4. TO TO FIX THE AMOUNT OF BLANKET SURETY BOND REQUIRED OF CREDIT UNION OFFICIALS.
5. THE ADMINISTRATOR SHALL HAVE THE GENERAL CONTROL, MANAGEMENT AND SUPERVISION OF ALL STATECHARTERED CREDIT UNIONS IN REFERENCE TO THEIR CONDUCT, ORGANIZATION MANAGEMENT, BUSINESS PRACTICES AND FISCAL MATTERS.
6. PRESCRIBE RULES AND REGULATIONS FOR THE ADMINISTRATION OF CHAPTER 54 AS WELL AS RULES AND REGULATIONS FOR THE DAY-TO-DAY OPERATIONS OF THE CREDIT UNIONS.

CHAPTER 54 STIPULATES UNDER 109.65 THAT A CREDIT UNION MAY LOAN FUNDS TO ITS MEMBERS FOR SUCH PURPOSE AND UPON SUCH SECURITY AND TERMS AS THE BOARD OF DIRECTORS MAY PRESCRIBE, THE RATES OF INTEREST NOT TO EXCEED 12%.

SINCE IT IS THE PURPOSE OF CREDIT UNIONS TO IMPROVE THE ECONOMIC LEVEL OF ITS MEMBERS, IT NATURALLY FOLLOWS THAT EVERY EFFORT WILL BE MADE BY THE COMMISSION, ADMINISTRATOR, AND BOARD OF DIRECTORS OF THE VARIOUS CREDIT UNIONS TO SEE THAT LOANS ARE MADE AT THE LOWEST POSSIBLE RATE AND PRODUCES INCOME ENOUGH TO ATTRACT MONEY IN SHARE ACCOUNTS FOR PAYING A FAVORABLE DIVIDEND RATE. MANY OF THE CREDIT UNIONS IN NORTH CAROLINA LOAN THE MAJORITY OF THEIR FUNDS AT LESS THAN THE MAXIMUM OF 12% AND IT IS NOT BELIEVED THAT ANY CHANGE WILL NEED TO BE MADE BY YOUR COMMISSION IN ORDER TO HAVE FAIR INTEREST RATES BEING CHARGED CONSUMERS IN NORTH CAROLINA.

IT IS THE MAIN PURPOSE OF THIS TALK TO REQUEST THAT THE FINANCIAL INSTITUTIONS IN NORTH CAROLINA NOT BE PLACED UNDER ONE SUPERVISORY AGENCY FOR THE FOLLOWING REASONS:

1. CREDIT UNIONS ARE NON-PROFIT ORGANIZATIONS FORMED TO ASSIST ITS MEMBERS.

2. THE REGULATORY AGENCY, CREDIT UNION DIVISION, IS A SELF-SUPPORTING DIVISION OF THE GOVERNMENT.

3. THE REGULATION AS PRESCRIBED IN CHAPTER 143-B AND CHAPTER 54 HAVE BEEN VERY EFFECTIVELY ADMINISTERED BY THE CREDIT UNION DIVISION AND CREDIT UNION COMMISSION SO THAT THE MAJORITY OF THE APPROXIMATELY 225 STATE-CHARTERED CREDIT UNIONS IN NORTH CAROLINA ARE WELL OPERATED INSTITUTIONS, SERVING THE CITIZENS OF NORTH CAROLINA WELL.

4. IN NORTH CAROLINA THERE ARE APPROXIMATELY 225 STATE-CHARTERED CREDIT UNIONS AND APPROXIMATELY 145 CREDIT UNIONS ORGANIZED UNDER THE FEDERAL CHARTER.

5. IN STATES WHERE THERE IS ONE REGULATORY AGENCY, THERE IS A PREPONDERANCE OF CREDIT UNIONS WHICH HAVE A NATIONAL CHARTER IN ORDER THAT THEY MIGHT AVOID UNFAIR TREATMENT BY THE STATE ADMINISTERED SYSTEM. AS A PRIME EXAMPLE OF THIS, THE STATE OF SOUTH CAROLINA HAS LESS THAN FIVE OF THEIR CREDIT UNIONS CHARTERED UNDER THEIR STATE STATUTES.

6. SEVENTEEN OF THE STATES NOW REGULATE CREDIT UNIONS UNDER THE BANKING DEPARTMENT AND IN MANY OF THESE STATES, LEGISLATION IS CURRENTLY BEING SOUGHT TO CREATE AN INDIVIDUAL AGENCY BECAUSE THE BANKING DEPARTMENT IS NOT OBJECTIVE, AND BECAUSE CONFLICTING PRESSURES WOULD NOT GIVE EQUAL TREATMENT TO EACH TYPE FINANCIAL INSTITUTION.

I HAVE THE GREATEST RESPECT AND APPRECIATION FOR BANKS AND SAVINGS AND LOANS ORGANIZATIONS BECAUSE I THINK THEY ARE FULFILLING A VERY NEEDED ROLE IN THE ECONOMY OF THE UNITED STATES. I ALSO BELIEVE THAT CREDIT UNIONS ARE FULFILLING A VERY NECESSARY ROLE IN THE ECONOMY AND PARTICULARLY IN THE RESPECT TO THE LOWER ECONOMIC LEVEL.

IT IS BELIEVED THAT IT WOULD BE EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO HAVE AN INDIVIDUAL ADMINISTER THE AFFAIRS OF THE BANKS, SAVINGS AND LOANS AND CREDIT UNIONS WITHOUT BEING PARTIAL TO ONE AT THE EXPENSE OF THE OTHERS.

WERE THE BANKS NOT IN SUCH A FAVORABLE POSITION, I BELIEVE THAT IT WOULD BE HIGHLY OBJECTIONAL FOR THEM TO CONSIDER AN INDIVIDUAL ASSOCIATED WITH CREDIT UNIONS BEING THE ADMINISTRATOR OVER THE ORGANIZATIONS AND I CAN ASSURE YOU THAT CREDIT UNIONS DO NOT LOOK FORWARD TO HAVING THE ADMINISTRATOR BEING AN INDIVIDUAL OR COMMISSION WHICH IS ORIENTED TOWARD THE BANKING AND SAVINGS AND LOAN INDUSTRY.

THE DUAL CHARTERING SYSTEM IN NORTH CAROLINA HAS BEEN WELL USED AND I SINCERELY HOPE THAT THE ADMINISTRATION OF CREDIT UNIONS WILL BE SUCH THAT THE DUAL CHARTERING SYSTEM WILL CONTINUE. IT IS A RELATIVELY EASY PROCESS TO CONVERT FROM ONE CHARTER TO ANOTHER AND AS A RABID "STATES RIGHTER", I WOULD HATE TO SEE SUCH A CHANGE OCCUR. THE CREDIT UNIONS BELIEVE THAT THEY HAVE A VERY EFFICIENT WORKABLE ADMINISTRATIVE ORGANIZATION AT THE PRESENT TIME AND WE WOULD ASK THAT IT NOT BE CHANGED.

I THANK YOU FOR YOUR COURTESY IN INVITING ME TO TALK TO YOU TODAY AND WOULD BE GLAD TO TRY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

CORDIALLY YOURS,

W. E. GREER

CHAIRMAN, CREDIT UNION COMMISSION

STATEMENT OF THEO H. PITT, JR.
On Behalf of the North Carolina Savings and Loan League
Regarding the Legislative Study Commission's Study of
Chapter 24 of the General Statutes and Related Credit
and Interest Laws and to Determine the Feasibility of
Establishing One Supervisory Authority Over All Lenders
In North Carolina as Provided for by Resolution 90
(HJR 1283). January 20, 1978

Senator Daniels, Representative Bell, and members of the Committee on Credit and Interest Laws; my name is Theo H. Pitt, Jr. I am Chairman of the North Carol Savings and Loan League Legislative Committee and am also President of Home Sav and Loan Association in Rocky Mount, North Carolina. I am pleased to appear here today to make a presentation on behalf of the North Carolina Savings and Loan Leag proposing the following issues or topics regarding the interest and fee provisions Chapter 24 of the North Carolina General Statutes for your consideration:

1. Structure of G.S. 24-1.1 and Exceptions

Currently G.S. 24-1 provides the general rule regarding the legal interest rat G. S. 24-1.1 is an exception to that, and G.S. 24-1.1A, -1.1B, -1.2 and -11, (am other statutes) are exceptions to G.S. 24-1.1. Rate ceilings vary according to suc features as: the amount of principal; the nature of the security (real or personal property, first or second mortgage); the use to which the security or loan proceed are put (e.g. business property loan, home loan); the identity of the lender (G.S. 24-1.1A(a)(2)); the identity of the borrower (G.S. 24-1.1B); the term of the loan and the method by which it is to be repaid. The possibility exists that a g loan might fall under more than one interest rate provision. The structure of rules

* The North Carolina Savings and Loan League has a membership of 179 savings an loan associations, representing in excess of 99% of the assets of the savings and loa business in North Carolina. The principal officers are: F. A. "Whit" Whiteside, J Chairman of the Board of Directors, Gastonia; Ralph H. Hodges, Jr., Vice-Chairm of the Board of Directors, Washington; James P. Marsh, Immediate Past Chairman o the Board of Directors, Boone; H. W. Wentworth, President, Greensboro. League headquarters are at 1024 Homeland Avenue (P. O. Box 6665), Greensboro, North Carolina 27405; Telephone (919) 275-7647.

and exceptions dependent on so many different factors has produced great confusion as to what rate is permitted in a given case. This obstructs orderly administration of the law.

The Committee should consider simplifying these rules guided by the principle that interest rates should vary dependent on as few factors as possible. The factors that trigger different permitted interest rate ceilings should be objective -- such as the amount of the loan. Requirements for determinations as to the identity of the lender, the business of the borrower, the use to which the property is put, etc., should be avoided. A simple set of rules dependent upon a few objective factors should be the goal. Also, the Committee should consider providing that, in cases where more than one interest rate ceiling may apply, the highest such ceiling will control.

2. Eliminate 8% Category

G.S. 24-1.1(1) imposes an 8% ceiling on loans of less than $50,000 secured by a first mortgage on real property. The exceptions to this statute -- business property loans, home loans, charitable loans, installment loans -- have swallowed the rule. The 8% restriction only applies to a very small class of loans not covered by the exceptions. An 8% limit is no longer economically realistic in the current market. The result is that loan money is not available to the few borrowers regulated by G.S. 24-1.1(1) and they are frustrated.

The Committee should consider eliminating the 8% ceiling provided in G.S. 24-1.1(1).

3. Clarification of General Provisions Regarding Fees

G.S. 24-10 authorizes lenders to charge certain described fees with respect to loans made "under G.S. 24-1.1". Chapter 24 contains sections headed 24-1.1, 24-1.1A and 24-1.1B. It is not clear whether the latter sections are "under G.S. 24-1.1". G. S. 24-10 does not expressly prohibit charging other fees or charging the same fees on other types of loans. In addition, G.S. 24-8 governs fees in general. The Attorney General recently gave his opinion that the only permissible fees are those "specifically provided" in the General Statues. G.S. 24-8 appears, however, to authorize certain fees not "specifically" provided.

The Committee should consider:

(a) expressly providing that loans made under G.S. 24-1.1A and -1.1B are loans made under G.S. 24-1.1. Both of these statutes are exceptions to G.S. 24-1.1 and were enacted after G.S. 24-10. (G.S. 24-1.1A contains a reference to G.S. 24-10).

(b) expressly providing that G.S. 24-10 does not purport to be an exclusive catalogue of permissible fees and that other lawful fees may be charged to the extent they are permitted in G.S. 24-8.

4. Clarification of Assumption Fee Provision

G.S. 24-10(d) permits lenders to charge a stated assumption fee (the lesser of 1% or $25) on loans of less than $50,000. The Attorney General recently concluded that no such fee may be charged on loans of greater amounts.

The Committee should consider authorizing assumption fees on all loans made under G.S. 24-1.1 (not just those less than $50,000) and the authorized fee should be either the lesser of 1% or $75; or as agreed between the parties.

5. Clarification of Interest Laws with Respect to Delayed Principal and Interest Payment Mortgages

Increasingly, lenders and borrowers are choosing deeds of trust and loan agreements which provide for small payments of principal and interest early in a loan term and larger payments at the end. The purpose of these plans is to tailor loan agreements to the projected financial condition of the borrower. Early in the term of such loans the payments do not cover the interest currently due. In effect, the lender lends interest as well as principal to the borrower early in the term of the loan.

Chapter 24 does not address this situation. The Committee should consider legislation that will expressly authorize lenders to collect interest on the interest payments advanced as described above; i.e. it should authorize "compounding" of unpaid interest where the parties so agree in writing.

6. Postpone Consideration of Single Agency to Regulate All Financial Institutions

Because of the differences in the origination and functions of various types of lenders (savings and loans, banks, credit unions, small loan companies), the differences in parallel federal regulation of these institutions and because of the organizational and administrative problems posed; there would appear to be little practical prospect that a single supervisory agency can be established now. The effect at this time would be to add an unnecessary level of bureaucracy at the top of the present structure. Study and meaningful recommendations would require great expenditures of time and resources.

Chapter 24 needs a complete overhaul. The entire resources of the Committee will likely be required to handle that task alone. We respectfully suggest that other inquiries should be postponed at the outset so that concerted attention may be focused on the urgency of rewriting Chapter 24.

The North Carolina Savings and Loan League offers to the Committee any assistance which it may request.

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611

MEMORANDUM

TO: Members of the Committee on Credit and Interest Laws
Legislative Research Commission

FROM: Terrence D. Sullivan, Committee Counsel

DATE: March 21, 1978

RE: Criticisms of and suggestions for improvement to Chapter 24 of the General Statutes and related interest laws.

On January 31, 1978, pursuant to the Committee's directions, I mailed a questionnaire to 19 representatives of organizations which had expressed an interest in the work of this Committee with regard to improving the interest laws of this State. The organizations consisted of departments and divisions of state governments, associations of financial institutions and consumer-interest groups.

The questionnaire asked for the following information:

1. a list in brief of the organization's general criticisms of both the structure and the substantive law concerning Chapter 24 of the General Statutes and related interest laws;

2. a list, in order of importance, of specific problems encountered in dealing with General Statutes Chapter 24 and related interest laws and specific suggestions for remedying them; and

3. the organization's position on the question of whether the interests of the citizens would be better served by a complete revision of the present interest laws rather than specific amendments to these laws.

As of this date, I have received responses from 13 of these

organizations, copies of which are attached. Three respondents favored a complete revision of the present interest laws, seven did not and three gave no opinion. The rest of this memorandum will briefly list the recurrent themes in the responses. The lists below group the criticisms and suggestions for improvement by topic. For the full explanation of the responses your attention is directed to the individual respondent's questionnaire.

A brief list of the general criticisms of the present interest laws follows:

> The structure of these laws make it difficult to apply the interest rates to daily business transactions with any degree of a certainty (Mr. Cole--Savings and Loan Division, Department of Commerce).
>
> The provisions of the interest statutes are jumbled together without any logical sequence (Mr. Green--Wake County Legal Aid Society).
>
> Some provisions relating to real estate and non-real estate loans are inconsistent and the terminology confusing (Mr. Warren--Mortgage Bankers Association of the Carolinas, Inc.).
>
> The interest rate provisions are unnecessarily confusing and ambiguous (Mr. Lehman--Orange-Chatham Legal Services).
>
> The law is unclear in many respects . . . [and fails] to deal with the problems in the field in a comprehensive and unified manner (Mr. Hirsch--Attorney General's Office).
>
> Confusion exists as to what fees are permitted under G.S. 24-8 and G.S. 24-10 (Mr. Hirsch--Attorney General's Office) and as to what fees may be charged to a non-profit organization under G.S. 24-1.1B (Mr. Cole--Savings and Loan Division).

For an indepth discussion of the technical problems contained in Chapter 24 your attention is directed to the attached response of Mr. John Jernigan of the North Carolina Bar Association.

Below is a list of some of the respondents' suggestions for improvement of the interest laws:

1. All laws establishing permitted interest rates for contracts should be contained in one chapter of the General Statutes (Mr. Green--Wake County Legal Aid Society).

Interest rates for all types of consumer credit should be located in a single statute or chart (Mr. Lehman--Orange-Chatham Legal Services).

2. Terminology of Chapter 24 should be made uniform by a separate definition section (Mr. Green--Wake County Legal Aid Society).

   a. All charges for money should be denominated interest (Mr. Green--Wake County Legal Aid Society).

   b. Interest rates should be expressed as annual rates, using the term "annual percentage rate" (Mr. Green--Wake-County Legal Aid Society).

   c. The phrase "percent per annum" in Chapter 24 should be clarified as to whether or not this phrase should refer to "effective," "discount," or "annual percentage" rates of interest and whether this is to be computed on the basis of a 360 or 365/366 day year (Mr. Jordan--North Carolina Bankers Association).

   d. Terms applying to regulated lenders should be made part of the regulatory statute and reference made to it in Chapter 24 (Mr. Tropman--Banking Commission).

3. The present interest laws should be revised in the light of G.S. 54-20 to specifically permit the use of alternative mortgage instruments (variable rate mortgages, graduated payment mortgages, etc.) by savings and loan associations (Mr. Cole--Savings and Loan Division, Mr. Wentworth--North Carolina Savings and Loan League).

4. Fees and charges permitted on loans:

   a. G.S. 24-8 which sets out permitted fees and costs should be amended to stipulate that all of these fees and costs should be "necessary" and "reasonable" (Mr. Green--Wake County Legal Aid Society).

   b. G.S. 24-10(d), which sets forth an inadequate ceiling on assumption fees on loans of not more than $50,000 and which are secured by real property, should be amended (Mr. Cole--Savings and Loan Division).

c. G.S. 24-10 should be clarified to delineate specifically permitted fees and also provide that other reasonable fees may be charged if agreed to by the parties to a loan (Mr. Wentworth--North Carolina Savings and Loan League, see also comments of Mr. Jordan--North Carolina Bankers Association).

d. G.S. 24-10 should be amended to specifically permit the charging of a late fee if the required payment is not received by the lender within 10 days after it is due (Mr. Wentworth--North Carolina Savings and Loan League).

e. Clarification as to whether the fee provisions of G.S. 24-10 apply to loan transactions under G.S. 24-1.1B "Contract Rates on Loans to Nonprofit Corporations" (Mr. Jordan--North Carolina Bankers Association).

5. A statute should be enacted to deal solely with first mortgage commercial and residential real estate loans. The statute should codify into one section the applicable provisions now contained in G.S. 24-1.1, 24-1.1A and 24-10 (Mr. Warren--Mortgage Bankers Association of the Carolinas, Inc.).

6. Second mortgage loans:

a. This lending should be covered in one article of Chapter 24. The interest rates should not depend on the status of the lender (Mr. Green--Wake County Legal Aid Society, see also Mr. Lehman--Orange-Chatham Legal Services).

b. All secondary mortgage lenders should be regulated by the same agency (Mr. Green--Wake County Legal Aid Society, see also Mr. Lehman--Orange-Chatham Legal Services).

c. The rate of charge in Article 2 of Chapter 24 should be eliminated and lenders permitted to collect fees or "points" authorized by G.S. 24-10 or lenders permitted an increased interest rate (Mr. Lehman--Orange-Chatham Legal Services).

d. Article 2 of Chapter 24 should conform clearly and

coherently to federal law with respect to disclosing components of the rate of charge and to a rebate provision (Mr. Lehman--Orange-Chatham Legal Services).

7. Contract rates on loans to nonprofit organizations (G.S. 24-1.1B) should be amended to permit parties to contract in writing for payment of interest not in excess of 10% per annum where the principal amount is $100,000 or less (Mr. Wentworth--North Carolina Savings and Loan League).

8. One of the respondents, who does not favor a complete revision of the interest laws, believes that if the Committee favors such a revision, the respondent would recommend the adoption of the Uniform Consumer Credit Code (Mr. Harkey--North Carolina Consumer Finance Association).

Alan S. Hirsch, Assistant Attorney General, Attorney General's Office

1. The structure of Chapter 24 and the other interest laws is without apparent design. The laws are a patchwork of many years worth of different responses to varying problems. As a result, they tend to create more problems than they solve. Substantively, the law is unclear in many respects. This results in confusion of lenders, borrowers and regulators. The greatest single problem with the present statutes is their failure to deal with the problems in the field in a comprehensive and unified manner.

2.

(1) What fees are permissible under G.S. 24-8 and G.S. 24-10?

(2) Generally, the proper rates for the various types of loans, set out in G.S. 24-1.1, 1A, and 1.2, and the unusual distinction between different types of collateral and different loan time periods.

(3) The varying rates for the same types of loans in the Consumer Finance Act.

(4) The confusion in understanding the rate structure for secondary mortgages in Article 2 of Chapter 24.

The listing above is only an offhand reflection of problems encountered. The problems themselves are so complex and of so many different sorts that it is extremely difficult to state with any surety which are most important. Clearly, in our view, the statutes must be rewritten. Only through such a process will there be any substantial hope that the problems can be resolved.

3. Yes

Name and Title Banks Organization

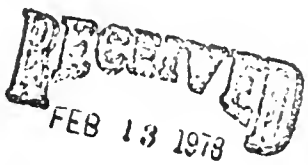
1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

Substantive - No comment.

Structure - The present statute addresses itself to numerous credit needs. Some are approached by transaction, some by lender, and some on a combination basis. One suggestion that might lead to easier understanding is that terms applying to regulated lenders be made part of that regulatory statute with only reference thereto in Chapter 24.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

Identifying type of credit, whether or not regulated, and matching to applicable statutes. Especially as to fees and other costs besides interest.



3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO)

Roy D. High, Administrator representing Dept. of Commerce, Credit U
Name and Title Organization Di

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

None. See reply to 2 below.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

I have encountered no specific problems in dealing with General Statutes Chapter since only GS 24-2 in regard to the penalty for usury seems to apply to the state chartered credit unions.

The interest and credit laws for state chartered credit unions are covered in Subchapter III, Chapter 54. In North Carolina there are approximately 400,000 members that belong to the 219 credit unions. I do not recall every getting a telephone call or letter from a credit union member complaining about interest charged or indicating a problem in understanding how the interest was computed or the amount charged. Alan Hirsch of the Comsumer Protection Division, Department of Justice, indicated he could not recall receiving any questions or complai from credit union members.

It would seem that credit union borrowers have little, if any, problems with the structure of Credit Union Laws as they relate to credit and interest. Not having to deal with the interest laws of Chapter 24, I have no suggestions for improving them.

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO) NO. Based on the remarks of those pres at the January 20, 1978, meeting, it appears that Chapter 24 is the problem.

W. L. Cole, Administrator representing Savings & Loan Division
Name and Title Organization

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

Since this office's principal responsibilities are to regulate and supervise the savings and loan associations chartered under the laws of this State and to protect the public investing in such associations, we will speak only to the structure of and not the substantive law concerning Chapter 24 of the General Statutes. The management of a savings and loan association works closely with the present interest laws on a daily basis and should be able to apply such laws to its daily business transactions without having to obtain the services of counsel. Therefore, the present interest laws should be revised for clarification purposes for the benefit of the management of a lending institution and the customers.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

Specific problems which have been encountered in dealing with Chapter 24 of the General Statutes and which may be remedied by a revision of Chapter 24, are as follows:

1. The structure of the present interest laws makes it difficult to apply the interest rates to daily business transactions with a normal degree of certainty.
2. There is the possibility that a given loan could fall under more than one interes rate provision.
3. The Committee should consider clarifying the statutes regarding fees which may be charged on loans. May fees be charged to a non-profit organization in connection with a loan as described in G.S. 24-1.1B?
4. State chartered savings and loan associations have encountered problems with G.S. 24-10(d) which permits lenders to charge the lesser of 1% or $25 as an assumption fee on loans of less than $50,000. It has been argued that said fee is inadequate and that there shouldn't be an amount limitation.
5. The Committee should revise the present interest laws in light of G.S. 54-20 which authorizes the use of alternative mortgage instrument by savings and loan associations.

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO) Yes

Lindsay C. Warren, Jr., Legislative Counsel representing Mortgage Bankers Association of The Carolinas, Inc.

Name and Title Organization

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws. In general, Chapter 24 contains the important provisions relating to our interest laws. Since it was substantially rewritten in 1969, there have been a number of amendments which have tended to eliminate ambiguities and uncertainties. There are still a number of changes that need to be made. These changes relate to confusing terminology and inconsistent provisions with respect to real estate and non-real estate loans. Als changes should be made so that lenders and borrowers are permitted to take advantag of modern day lending practices.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

The function of the mortgage banker is to bring together the investor lender and th borrower with respect to long term first mortgage loans on commercial and residenti real estate. Since North Carolina is a deficit capital state (i.e. we must still l beyond our borders for substantial investment capital), many investor lenders are n resident lenders. They are usually insurance companies and other financial institu tions which have funds to invest on a long term basis. To remain competitive with other states for these long term funds, North Carolina must not erect artificial ba riers which would tend to discourage investment in North Carolina. Our interest laws should permit prospective lenders and borrowers to deal with each other based upon prevailing market conditions. To the extent this is not possible, the lender will invest its funds elsewhere. Therefore, it is important that North Carolina ha a clear and concise statement of its policy with respect to first mortgage loans. The Mortgage Bankers Association recommends to the Committee that a single statute be enacted by the General Assembly as a part of Chapter 24, which deals solely with first mortgage commercial and residential real estate loans. Such a statute would codify into one section the applicable provisions now contained in G. S. Section 24 1.1, G. S. Section 24-1.1A and G. S. Section 24-10. At a later date, a proposed draft of such a statute will be submitted to the Committee for its consideration.

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO) No. Looking at Chapter 24 solely from the perspective of the mortgage banking industry, I believe amendments to or a re-write of two or three sections of Chapter 24 will suffice.

John R. Jordan, Jr., Attorney, representing North Carolina Bankers Associa
Name and Title Jordan, Morris and Hoke Organization

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

See Attached

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

1. Clarification of all fee provisions contained in N.C.G.S. 24-10, "Maximum Fees on Loans Secured By Real Property", and specifically the availability of these fees for loan transactions purusant to N.C.G.S. 24-1.1B, "Contract Rates on Loans to Nonprofit Organizations".

2. Clarification of the phrase "per cent per annum" where it appears in N.C.G.S. Chapter 24, specifically as to whether or not this phrase should refer to "effective", "discount", or "annual percentage" rates of interest. (See also, N.C.G.S. 53-43(1))

3. Clarification of computing "per cent per annum" on the basis of a 360 or 365/366 day year.

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO)

No. See answer to question #1.

Chapter 24 has undergone an extensive study and major rewrite in 1969 and additional amendments in every session since 1969. These revisions by the General Assembly and the studies which accompanied them have resulted in modernizing Chapter 24 to the benefit of lenders and borrowers alike. For this reason, it is the position of the North Carolina Bankers Association that further revisions to Chapter 24 would best be in the form of amendments to deal with specific problems which have arisen. In fact, it is likely that an overall rewrite of the entire Chapter, rather than a concentration on specific problems, could result in a rewritten Chapter containing more problems and inconsistencies than does the present Chapter. Thus, in response to question No. 2, The NCBA lists several specific problems which banks have encountered in dealing with Chapter 24, and which it feels could be resolved by further amendment to Chapter 24.

§ 24-1. Legal rate is six per cent.—The legal rate of interest shall be six per cent per annum for such time as interest may accrue, and no more. (1876-7, c. 91; Code, s. 3835; 1895, c. 69; Rev., s. 1950; C. S., s. 2305.)

This statute establishes the legal rate of interest at six percent, unless otherwise prescribed by law.

§ 24-1.1. Contract rates. — Except as otherwise provided in this chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a loan or forbearance may contract in writing for the payment of interest not in excess of:

(1) Eight percent (8%) per annum where the principal amount is fifty thousand dollars ($50,000) or less and is secured by a first mortgage or first deed of trust on real property; or
(2) Ten percent (10%) per annum where the principal amount is one hundred thousand dollars ($100,000) or less and is a business property loan; or
(3) Nine percent (9%) per annum where the principal amount is one hundred thousand dollars ($100,000) or less and is not a transaction set forth in (1) or (2) above; provided, a minimum charge of ten dollars ($10.00) or one dollar ($1.00) per payment may be agreed to and charged in lieu of interest; or
(4) Twelve percent (12%) per annum where the principal amount is more than one hundred thousand dollars ($100,000) but not more than three hundred thousand dollars ($300,000); or
(5) Any rate agreed upon by the parties where the principal amount is more than three hundred thousand dollars ($300,000).

As used in this section, a "business property loan" is a loan, purchase money loan, advance, commitment for a loan or forbearance secured by real property of the borrower which is held or acquired for sale, lease or use in connection with the borrower's trade, business or profession other than farming and livestock operations, and the proceeds of which are to be used for the purpose of either acquiring, refinancing or improving such real property or in connection with such trade, business or profession of the borrower. A written statement of the borrower's intention to use the loan proceeds for such purpose, signed by the borrower and accepted in good faith by the lender, shall be conclusive evidence of the purpose for which the loan is made. As used in this section, interest shall not be deemed in excess of the rates provided where interest is computed monthly on the outstanding principal balance and is collected not more than thirty-one days in advance of its due date. Nothing in this section shall be construed to authorize the charging of interest on committed funds prior to the disbursement of said funds. (1969, c. 1303, s. 1; 1977, c. 778, ss. 1, 3; c. 779, s. 1.)

This statute prescribes permissible contract rates, unless otherwise more specifically provided by statute.

The difficulty of applying this statute results in part from its provisions being subject to other more specific statutes. In addition, the statute has a number of definitional problems. For example, the term "principal amount" is not defined and thus the question arises as to whether the permissible interest rate on an "advance" is determined by the amount of the advance, or the collective total of the advances or the face amount of the promissory note. Another example is whether a commitment for a loan is the same as a line of credit and if so, is the permissible rate determined by the amount of the total commitment or by the amount of a specific advance or by the total outstanding in the borrower's account?

§ 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust. — (a) Notwithstanding any other provision of this Chapter, parties to a home loan may contract in writing as follows:

(1) Where the principal amount is ten thousand dollars ($10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;

(2) Where the principal amount is less than ten thousand dollars ($10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a national mortgage association or any federal agency, or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;

(3) Where the principal amount is less than ten thousand dollars ($10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of ten percent (10%) per annum.

(b) No prepayment fees shall be contracted by the borrower and lender with respect to any home loan where the principal amount borrowed is one hundred thousand dollars ($100,000) or less; otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan.

(c) Except as limited by subsection (b) above, a lender may charge to the borrower the fees described in G.S. 24-10.

(d) The loans or investments regulated by G.S. 53-45 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a loan where the principal amount is less than three hundred thousand dollars ($300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations. (1973, c. 1119, ss. 1, 2; 1975, c. 260, s. 1; 1977, c. 542, ss. 1, 2.)

This statute prescribes the permissible rate of interest for home loans secured by first mortgages, prohibits prepayment fees on such loans under $100,000 and provides initial fees to be charged pursuant to N.C. G.S. 24-10.

We are not aware of constructional problems with this recently enacted statute, effective June 30, 1977, other than the definition of home loan.

§ 24-1.1B. Contract rates on loans to nonprofit organizations. — (a) Notwithstanding any other provision of this Chapter, except as hereinafter provided, the parties of a loan, purchase money loan, advance or forbearance may contract in writing for the payment of interest not in excess of nine percent (9%) per annum where the principal amount is one hundred thousand dollars ($100,000) or less and is secured by a mortgage or deed of trust on real property owned by a nonprofit organization, and used for religious, fraternal, educational, scientific, literary or charitable purposes; provided, however, that the provisions of G.S. 24-1.1A shall apply to loans to such nonprofit organizations where said loans fall within the definition of home loans as contained in G.S. 24-1.1A.

(b) A written statement that the borrower is a nonprofit organization and that the real property is used for religious, fraternal, educational, scientific, literary or charitable purposes, signed by the borrower and accepted in good faith by the lender shall be conclusive evidence of the nature of the organization and the purposes for which the real property is used. As used in this section, interest shall not be deemed in excess of the rates provided where interest is computed monthly on the outstanding principal balance that is collected not more than 31 days in advance of its due date. (1977, c. 779, s. 2.)

This statute limits to nine percent the permissible rate of interest which can be charged to certain nonprofit corporations on loans of $100,000 or less and secured by real property.

What fees, if any, are permitted to be charged to nonprofit corporations?

Does the statute attempt to qualify the type of nonprofit corporation to which the statute applies or is the qualification in terms of the use of loan funds or both and furthermore, what is the impact of section (b) of the statute on the answer to this question?

§ 24-1.2. Installment rates. — Except as otherwise provided in this Chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a loan, or forbearance, may contract in writing for the payment of interest not in excess of:

(1) On installment loans which shall not be for periods of less than six months nor for more than 120 months and which are repayable in substantially equal consecutive monthly payments, the parties to a loan may contract in writing for payment of rates of interest which shall not be collected in advance and which shall be computed monthly on the outstanding principal balance, on loans having an original amount of five thousand dollars ($5,000) or less and which shall not be secured in any manner or to any degree by real property, an interest rate of fifteen percent (15%) per annum; provided, a minimum charge of ten dollars ($10.00) or one dollar ($1.00) per payment may be agreed to and charged in lieu of interest. The borrower may prepay all or any part of the loan without penalty. The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan.

(2) On installment loans not exceeding three hundred thousand dollars ($300,000) not secured by a first security instrument on real property, payable at least quarterly in substantially equal payments of principal and interest, or substantially equal payments of principal, upon a written agreement signed by the parties, the rate of interest shall not exceed twelve percent (12%) per annum computed on the outstanding balance, provided a minimum charge of ten dollars ($10.00) or one dollar ($1.00) per payment may be agreed to and charged in lieu of interest. The borrower may prepay all or any part of the loan without penalty. No lender or lending agent which holds or makes a loan secured by a first security instrument on real property shall make within the first year from the date of the making of the loan secured by the first security instrument a loan secured by a subordinate security instrument on the same property which shall exceed twenty percent (20%) of the original amount of the loan secured by the first security instrument on such real property. Under the provisions of this subsection, a first security instrument is a first mortgage or first deed of trust on real property securing a loan payable in equal installments of principal and interest or equal installments of principal over a period of at least one year, such installments to have been paid at least annually. The maturity date of loans made under this section shall not be less than one year from the date of the advance.

(3) On installment loans not exceeding fifty thousand dollars ($50,000), when secured by a first mortgage or deed of trust on real property where such real property is not used as the principal residence of the borrower, repayable in no less than two years nor more than 10 years at least quarterly in substantially equal payments of principal and interest, upon written agreement signed by the parties, the rate of interest shall not exceed ten percent (10%) per annum computed on the outstanding balance. The borrower may prepay all or any part of such loan at any time prior to maturity without penalty.

(4) On installment loans not exceeding seven thousand five hundred dollars ($7,500), when secured by a first mortgage or deed of trust on real property, repayable in no less than one year nor more than 10 years in substantially equal monthly payments of principal and interest, upon written agreement signed by the parties, the rate of interest shall not exceed ten percent (10%) per annum computed on the outstanding balance. The borrower may prepay all or any part of such loan at any time prior to maturity without penalty.

(5) Nothing in this section shall be construed to authorize the charging of interest on committed funds prior to the disbursement of said funds. (1969, c. 1303, s. 2; 1971, c. 445, c. 1122, ss. 1, 2; c. 1165, 1977, c. 778,

This statute basically governs the rate of interest permitted to be charged on even payment, limited term installment loans.

One of the basic problems with the use of this statute is the proper determination of its scope of application to all types of installment lending.

§ 24-1.3. Legal rate of interest payable by cooperative marketing associations. — Unless a greater rate of interest is allowed by this Chapter, the legal rate of interest payable by cooperative marketing associations shall not exceed ten percent (10%) per annum. (1975, c. 822.)

This statute limits the amount of interest payable by cooperative marketing associations, in contrast with the remainder of Chapter 24 which provisions are expressed in terms of limits on the amount of interest permitted to be charged.

Why is this statute expressed in these terms?

Does the penalty for interest apply to a violation of N.C. G.S. 24-1.3?

§ 24-2. Penalty for usury; corporate bonds may be sold below par. — The taking, receiving, reserving or charging a greater rate of interest than permitted by this chapter or other applicable law, either before or after the interest may accrue, when knowingly done, shall be a forfeiture of the entire interest which the note or other evidence of debt carries with it, or which has been agreed to be paid thereon. And in case a greater rate of interest has been paid, the person or his legal representatives or corporation by whom it has been paid, may recover back twice the amount of interest paid in an action in the nature of action for debt. In any action brought in any court of competent jurisdiction to recover upon any such note or other evidence of debt, it is lawful for the party against whom the action is brought to plead as a counterclaim the penalty above provided for, to wit, twice the amount of interest paid as aforesaid, and also the forfeiture of the entire interest. If security has been given for an usurious loan and the debtor or other person having an interest in the security seeks relief against the enforcement of the security or seeks any other affirmative relief, the debtor or other person having an interest in the security shall not be required to pay or to offer to pay the principal plus legal interest as a condition to obtaining the relief sought but shall be entitled to the advantages provided in this section. Nothing contained in this section or in § 24-1, however, shall be held or construed to prohibit private corporations from paying a commission on or for the sale of their coupon bonds, nor from selling such bonds for less than the par value thereof. (1879-7, c. 91; Code, s. 3836; 1895, c. 69; 1903, c. 154; Rev., s. 1951; C. S., s. 2306; 1955, c. 1196; 1959, c. 110; 1969, c. 1303, s. 3.)

This statute defines usury and specifies the penalty for violation of the statute.

Does interest include finance charges, service charges and fees, each of which is used throughout Chapter 24, so as to make the penalty provisions of N.C. G.S. 24-2 applicable?

§ 24-3. Time from which interest runs.—Interest is due and payable on instruments, as follows:

(1) All bonds, bills, notes, bills of exchange, liquidated and settled accounts shall bear interest from the time they become due, provided such liquidated and settled accounts be signed by the debtor, unless it is specially expressed that interest is not to accrue until a time mentioned in the said writings or securities.

(2) All bills, bonds, or notes payable on demand shall be held and deemed to be due when demandable by the creditor, and shall bear interest from the time they are demandable, unless otherwise expressed.

(3) All securities for the payment or delivery of specific articles shall bear interest as moneyed contracts; and the articles shall be rated by the jury at the time they become due.

(4) Bills of exchange drawn or indorsed in the State, and which have been protested, shall carry interest, not from the date thereof, but from the time of payment therein mentioned. (1786, c. 248, P. R.; 1828, c. 2; R. C., c. 13, Code, ss. 44, 45, 46, 47; Rev., s. 1952; C. S., s. 2307.)

This statute attempts to define the time from which interest

§ 21-1. Obligations due guardians to bear compound interest; rate of interest. — Guardians shall have power to lend any portion of the estate of their wards upon bond with sufficient security, to be repaid with interest annually, and all the bonds, notes or other obligations which he shall take as guardian shall bear compound interest, for which he must account, and he may assign the same to the ward on settlement with him. On loans made out of the estate of their wards, guardians may lend at any rate of interest not less than four percent per annum and not more than the maximum lawful rate. This section shall in no way limit or affect the powers of guardians to make other investments which are now or may hereafter be authorized or permitted by the laws, statutory or otherwise, of the State of North Carolina. (1762, c. 69, P. R.; 1816, c. 925, P. R.; R. C., c. 54, s. 23; 1868-9, c. 201, s. 29; Code, s. 1592; Rev., s. 1953; C. S., s. 2308; 1943, c. 728; 1969, c. 1303, s. 4.)

There are no apparent problems with the application of this statute.

§ 24-5. Contracts, except penal bonds, and judgments to bear interest; jury to distinguish principal.—All sums of money due by contract of any kind, excepting money due on penal bonds, shall bear interest, and when a jury shall render a verdict therefor they shall distinguish the principal from the sum allowed as interest; and the principal sum due on all such contracts shall bear interest from the time of rendering judgment thereon until it is paid and satisfied. In like manner, the amount of any judgment or decree, except the costs, rendered or adjudged in any kind of action, though not on contract, shall bear interest till paid, and the judgment and decree of the court shall be rendered according to this section. (1786, c. 253, P. R.; 1789, c. 311, s. 4, P. R.; 1807, c. 721, P. R.; R. C., c. 31, s. 90; Code, s. 530; Rev., s. 1954; C. S., s. 2309.)

At what rate shall the obligation bear interest in each of the situations governed by the statute?

§ 24-6. Clerk to ascertain interest upon default judgment on bond, covenant, bill, note or signed account.—When a suit is instituted on a single bond, a covenant for the payment of money, bill or exchange, promissory note, or a signed account, and the defendant does not plead to issue thereon, upon judgment, the clerk of the court shall ascertain the interest due by law, without a writ of inquiry, and the amount shall be included in the final judgment of the court as damages, which judgment shall be rendered thereon in the manner prescribed by § 24-5. (1797, c. 475, P. R.; R. C., c. 31, s. 91; Code, s. 531; Rev., s. 1956; C. S., s. 2310.)

An amendment to N.C. G.S. 24-5 should clarify this statute.

§ 24-7. Interest from verdict to judgment added as costs.—When the judgment is for the recovery of money, interest from the time of the verdict or report until judgment is finally entered shall be computed by the clerk and added to the costs of the party entitled thereto. (Code, s. 529; Rev., s. 1955; C. S., s. 2311.)

There are no apparent problems with the application of this statute.

§ 21-8. Loans not in excess of $300,000; what interest, fees and charges permitted. — No lender shall charge or receive from any borrower or require in connection with a loan any borrower, directly or indirectly, to pay, deliver, transfer or convey or otherwise confer upon or for the benefit of the lender or any other person, firm or corporation any sum of money, thing of value or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in chapter 24 or chapter 53 of the North Carolina General Statutes, where the principal amount of a loan is not in excess of three hundred thousand dollars ($300,000.00); provided, this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan; provided that this shall not prevent the lender from collecting from the borrower for remittance to others, money in payment of taxes, assessments, cost of upkeep, recording fees, surveys, attorneys' fees, fire, title, life and mortgage insurance premiums and other such fees and costs, nor from receiving the proceeds from any insurance policies where a loss occurs under the terms of such policies. This section shall not be applicable to any corporation licensed as a "Small Business Investment Company" under the provisions of the United States Code Annotated, Title 15, section 661, et seq. nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange. (1961, c. 1142, 1969, c. 127; c. 1303, s. 5.)

This statute in essence prohibits a lender from taking an equity position in a loan in an amount of $300,000 or less and beyond that prohibits the lender from extracting from the borrower anything of value other than the security, the fees and interest permitted by Chapters 24 and 53.

Does the scope of this statute extend to prohibit the charging of any fees, other than those prescribed in N.C. G.S. 24-10?

§ 24-9. Certain loans to corporations organized for profit not subject to claim or defense of usury. — Notwithstanding any other provision of this chapter or any other provision of law, any foreign or domestic corporation substantially engaged in commercial, manufacturing or industrial pursuits for pecuniary gain may agree to pay, and any commercial factor may charge and collect from such corporation, interest at any rate which such corporation may agree to pay in writing, provided such interest is charged upon loans, advances or forbearances which are secured by liens upon or security interests in accounts receivable, materials, goods in process, inventory, machinery, equipment and other similar personal property, whether tangible or intangible, and as to any such transaction the claim or defense of usury by such corporation and its successors or anyone else in its behalf is prohibited. For the purpose of this section, the term "commercial factor" shall be defined to mean any corporation, foreign or domestic, or any partnership which engages principally in the aforesaid secured financing. (1963, c. 753, s. 1; 1965, c. 335; 1969, c. 896.)

This statute permits corporations to pay the contract rate of interest to a commercial factor.

Does the commercial factor lose the benefit of the exemption afforded by this statute by including real property as security for the loan?

Is a commercial bank engaged principally in the secured financing described in the statute so that it can qualify as a commerical factor?

Should the exemption found in this statute be limited to corporations?

§ 24-10. Maximum fees on loans secured by real property. — (a) No lender on loans made under G.S. 24-1.1 shall charge or receive from any borrower or any agent for a borrower, or from any agent, seller or broker, which inures to the benefit of the lender, any fees or discounts, in addition to the provisions of G.S. 24-10(b) or in addition to lawful interest in connection with any loan where the principal amount is less than three hundred thousand dollars ($300,000.00) and is secured by real property, which fees or discounts in the aggregate shall exceed two percent (2%) if a construction loan on other than a one or two family dwelling, one percent (1%) if a construction loan on a one or two family dwelling, and one percent (1%) if other than a construction loan; provided where a single lender makes the construction loan and the permanent loan utilizing one note, the lender may collect the fees herein provided for construction loans and the fees for other than construction loans.

(b) Any loan made under G.S. 24-1.1 in an original principal amount of one hundred thousand dollars ($100,000.00) or less may be prepaid in part or in full, after 30 days notice to the lender, with a maximum prepayment fee of two percent (2%) of the outstanding balance at any time within three years after the first payment of principal and thereafter there shall be no prepayment fee, provided that there shall be no prepayment fee charged or received in connection with any repayment of a construction loan; and except as herein provided, any lender and any borrower may agree on any terms as to prepayment of a loan.

(c) "Construction loan" means a loan which is obtained for the purpose of financing fully, or in part, the cost of constructing buildings or other improvements upon real property and the proceeds of which, under the terms of a written contract between a lender and a borrower, are to be disbursed periodically as such construction work progresses; and such loan shall be payable in full not later than 18 months in case of a loan made under the provisions of G.S. 24-1.1(1) or 36 months in case of any other construction loan made after the execution of the note by the borrower. A construction loan may include advances for the purchase price of the property upon which such improvements are to be constructed.

(d) Any lender may charge any person, persons, firm or corporation that assumes a loan made under the provisions of G.S. 24-1.1, where the principal amount assumed is not more than fifty thousand dollars ($50,000) and is secured by real property, a fee not to exceed one percent (1%) of the principal amount due or twenty-five dollars ($25.00), whichever is less. (1967, c. 852, s. 1; 1969, c. 40; c. 1303, s. 6; 1971, c. 1168.)

This statute prescribes the initial fees and prepayment fees that may be charged in a real estate transaction.

Is this statute exclusive?

Does this statute apply exclusively to loans governed by N.C. G.S. 24-1.1?

By failure to refer to other sections of Chapter 24, does the statute, by implication, exclude the charging of initial fees and prepayment fees other than under N.C. G.S. 24-1.1?

§ 24-11. Certain revolving credit charges. — (a) On the extension of credit under an open-end credit or similar plan including revolving credit card plans, and revolving charge accounts, but excluding any credit made available by a lender under a check loan, check credit or other such plan under which no service charge shall be imposed upon the consumer or debtor if the account is paid in full within 25 days from the billing date, there may be charged and collected interest, finance charges or other fees at a rate in the aggregate not to exceed one and one-half percent (1½%) per month computed on the unpaid balance of the previous month or the average daily balance outstanding during the billing period. No person, firm or corporation may charge a discount or fee in excess of six percent (6%) of the principal amount of the accounts acquired from or through any vendors or others providing services who participate in such plan.

(b) On revolving credit loans (including check loans, check credit or other revolving credit plans whereby a bank, banking institution or other lending agency makes direct loans to a borrower), if agreed to in writing by the borrower, such lender may collect interest and service charges by application of a monthly periodic rate computed on the average daily balance outstanding during the billing period, such rate not to exceed one and one-quarter percent (1¼%) on such balance up to and including five thousand dollars ($5,000), and such rate not to exceed one percent (1%) on such balance in excess of five thousand dollars ($5,000).

(c) Any extension of credit under an open-end or similar plan under which there is charged a monthly periodic rate greater than one and one-quarter percent (1¼%) may not be secured by real or personal property or any other thing of value, provided, that this subsection shall not apply to consumer credit sales regulated by Chapter 25A, the Retail Installment Sales Act; provided further, that in any action initiated for the possession of property in which a security interest has been taken, a judgement for the possession thereof shall be restricted to commercial units (as defined in G.S. 25-2-105(6)) for which the cash price was one hundred dollars ($100.00) or more.

(d) The term "billing date" shall mean any date selected by the creditor and the bill for the balance of the account must be mailed to the customer at least 14 days prior to the date specified in the statement as being the date by which payment of the new balance must be made in order to avoid the imposition of any finance charge. (1967, c. 852, s. 1.1, 1969, c. 1303, s. 7; 1977, c. 143, s. 1; cc. 917, 1108.)

This statute governs the rates permitted on open-end credit accounts.

ARTICLE 2.

Loans Secured by Secondary or Junior Mortgages.

§ 24-12. Applicability of Article. — This Article shall apply only to loans of money:

(1) Secured in whole or in part by a security instrument on real property, other than a first security instrument on real property, and

(2) The principal amount of the loan does not exceed seven thousand five hundred dollars ($7,500), and

(3) The loan is repayable in no less than six nor more than 72 successive monthly payments, which payments shall be substantially equal in amount. (1971, c. 1229, s. 2.)

Editor's Note. — Session Laws 1971, c. 1229, s. 3, makes this Article effective July 1, 1971.

§ 24-13. Principal amount defined. — The aggregate of the amount or value actually received at the time of the loan, plus the hereinafter stated rate of charge, plus the sum of all existing indebtedness of the borrower paid on his behalf by the lender, shall be deemed the principal amount of the loan. (1971, c. 1229, s. 2.)

§ 24-11. Limitations on charges and interest. — (a) No person, copartnership, association, trust, corporation or other legal entity making loans under this Article may charge, take or receive, directly or indirectly,

(1) Actuarial interest in excess of twelve percent (12%) per annum on the principal amount of the loan; and

(2) A rate of charge in excess of ten percent (10%) of the principal amount of the loan or five hundred dollars ($500.00), whichever is less.

(b) The rate of charge as used in subdivision (2), subsection (a) above shall include any and every type of charge for compensation, consideration or expense, or for any other purpose whatsoever, including whatsoever name called, but not by way of limitation, application fees, title searches, title reports, title opinions, title guarantees, credit reports, investigation costs, preparation of instruments, placement or discount fees, brokerage fees, recordings, appraisals, other closing costs, and insurance of any nature except as provided in subsection (c) below, but shall not include actuarial interest at the rate of twelve percent (12%) per annum or less as authorized in the preceding subsection or any charges as authorized in G.S. 24-15.

(c) Evidence of hazard insurance may be required by the lender of the borrower. Decreasing term credit life insurance is optional, in an amount not exceeding the sum of the monthly installments payable under the loan and for a period not exceeding the term of the loan, provided (i) that the borrower has indicated a desire to purchase such insurance by signing a statement to that effect, (ii) that the borrower is advised that he may acquire this insurance from any insurance carrier, (iii) that the borrower is aware that this insurance may be rescinded within 15 days after receipt of the policy, and (iv) that the borrower directs the lender to purchase the above insurance from the proceeds of his loan.

The rates for the herein described insurance shall not exceed the standard rates approved by the Commissioner of Insurance for such insurance. Proof of all insurance issued in connection with loans subject to this Article shall be furnished to the borrower within 10 days from the date of application therefor by said borrower.

(d) No application fee or other charge shall be allowed in the event the loan is not consummated.

(e) The borrower shall further have the right to anticipate payment of his debt in whole or in part at any time, without payment of interest penalty, or any other fee or charge for such prepayment. (1971, c. 1229, s. 2; 1973, c. 1150; 1977, c. 698, ss. 1, 2.)

Editor's Note. — The 1973 amendment substituted "five hundred dollars ($500.00)" for "three hundred dollars ($300.00)" in subdivision (2) of subsection (a).

The 1977 amendment added "or any charges as authorized by G.S. 24-15." in subsection (b). In subsection (e), designated the former fourth and fifth sentences as the second paragraph, and in the present first paragraph, inserted "credit" and "is optional" in the second sentence, substituted the language beginning "provided (i) that the borrower" for "may also be required by the lender" at the end of the second sentence, and deleted the former third sentence, which related to the premium of term life insurance if paid by the lender on behalf of the borrower.

§ 24-15. Rebates and late charges. — (a) If a renewal or additional loan shall be made to the same borrower within 36 months after the original loan, or after a previous renewal or additional loan, the borrower shall receive a pro rata rebate from the previously charged rate of charge computed by multiplying the number of months remaining in the loan contract by that quotient obtained by dividing the rate of charge by the total number of months in the loan contract of the loan which has been liquidated or renewed. Charges and fees actually paid by the lender to others and which did not inure to the benefit of the lender shall not be included in the computation of rebates.

(b) A delinquent or late charge of five percent (5%) of the monthly payment or five dollars ($5.00), whichever is less, may be charged on any installment delinquent more than 15 days after the regularly scheduled due date, said charge to be made only once after the regularly scheduled due date. (1971, c. 1229, s. 2; 1977, c. 698, s. 3.)

Editor's Note. — The 1977 amendment, in the second sentence of subsection (a), substituted "Charges and" for "Appraisal or recording" at the beginning and deleted "for appraisals and registration" following "paid by the lender to others."

§ 24-16. Itemized closing statements. — Any person, copartnership, association, trust, corporation, or any other legal entity making on its own behalf, or as agent, broker or in other representative capacity on behalf of any other person, copartnership, association, trust, corporation or any other legal entity, a loan or real property financing transaction within the regulatory authority of this Article, at the time of the closing shall furnish the debtor or borrower or grantor in the mortgage, deed of trust or any other security instrument, in addition to the disclosures required by federal law known as "Truth in Lending," a complete and itemized closing statement which shall show all disbursements of the loan proceeds and which shall total the principal amount of the loan or security transaction, and the said closing statement shall be signed by the lending agency or a representative of the lending agency, or a responsible officer in its behalf and a completed and signed additional copy retained in the files of the lending agency involved and available at all reasonable times to the borrower, the borrower's successor in interest to the security real property, or the authorized agent of the borrower or the borrower's successor, until such time as the security instrument shall be satisfied in full. Such closing statement shall contain the following language printed in a conspicuous manner:

"This loan is one regulated by the provisions of Chapter 21, Article 2 of the General Statutes of North Carolina entitled 'Loans Secured by Secondary or Junior Mortgages'." (1971, c. 1229, s. 2.)

§ 24-16.1. Loans exempt from §§ 24-12 to 24-17. — G.S. 24-12 to 24-17 shall not apply to loans made by banks, insurance companies, or their duly designated agents compensated directly by the lender, duly licensed credit unions, production credit associations authorized by the Farm Credit Act of 1933, or savings and loan associations authorized to do business in this State, or to loans made by any other lender licensed by, and under the supervision of the Commissioner of Banks and the State Banking Commission, under the provisions of Chapter 53 of the General Statutes, or the Commissioner of Insurance, under the provisions of Chapter 58 of the General Statutes. (1971, c. 1229, s. 2.)

§ 24-17. Misdemeanors. — A wilful or knowing violation of G.S. 24-12 through G.S. 24-16 is hereby made a misdemeanor punishable by fine or imprisonment, or both, in the discretion of the court. (1971, c. 1229, s. 2.)

Article 2, which governs loans secured by secondary or junior mortgages, does not apply to loans made by institutional lenders such as banks, insurance companies and savings and loans and is further limited in its application to loans of money in a principal amount not in excess of $7,500, repayable in 6 to 72 successive monthly payments and secured by secondary mortgages on real estate.

A number of the terms used in this article are not terms customarily used in the general practice of law. Some examples are as follows: (i) N.C. G.S. 24-14 (a) refers to a "copartnership"; (ii) N.C. G.S. 24-14 (a) (1) refers to "actuarial" interest; (iii) N.C. G.S. 24-14 (b) refers to "title guarantees". More conventional language is found in Section 226.4 of Regulation Z.

Loans subject to this article are also subject to both the disclosure and rescission provisions of Regulation Z and because of apparent discrepancies between state law and federal regulations, most lenders now furnish their customers with two separate disclosure forms, which is of course an added and unnecessary cost to the loan transaction, ultimately borne by the consumer.

There is also apparent confusion between the application of this article and the application of N.C. G.S. 53-176, the North Carolina Consumer Finance Act.

These are a few of the problems which are apparent to us from an analysis of the present interest laws and which we believe could be solved by appropriate amendments to Chapter 24.

N. C. Consumer Finance Association

Response to Questionnaire- Interest Rates Study Commission

To: Mr. Terry Sullivan

From: Charles N. Harkey Jr.

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

A. Members of this Association operate almost exclusively under the North Carolina Consumer Finance Act (GS 53-164) and the Retail Installment Sales Act (GS 25 A-1). Therefore, it has no general criticism of Chapter 24.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24, and related interest laws and your specific suggestions for remedying them.

A. See response to question 3.

3. In your opinion, would the interests of the people of this state be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (Yes or No)

A. No. However, if it is felt that a general comprehensive code be adopted, we would recommend the adoption of Uniform Consumer Credit Code (UCCC) as recommended by the National Conference of Commissioners on Uniform State Laws (1974 text) which has been adopted in states such as INdiana, Colorado, Utah, Oklahoma, South Carolina, Iowa, Kansas, Idaho and Wyoming. The UCCC is the only model act which represents a balanced approach to the question of proper consumer credit laws and which also has a track record of success in some nine states. It is acceptable to our Association only when it is considered in its entirety, in that it is carefully balanced.

John Johnston, Managing Director representing N. C. Credit Union League

Name and Title Organization

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

None. We have received no complaints from credit unions or members of credit unions regarding Chapter 24 or related interest laws.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

None.

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (XXX or NO)

Name and Title: J. Ray Sparrow, President

.e of Organization: N. C. Home Builders Association

City: Raleigh Telephone #: (919) 833-7341

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

   We have no general criticism concerning Chapter 24 of the General Statutes; however, if Chapter 24 is rewritten for clarity sake we recommend that the section pertaining to first mortgage real property be separated from consumer loans.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them.

   We have encountered no specific problems; however, we suggest that the law be expanded to permit graduated mortgage payments for conventional loans similar to the graduated mortgage payments permitted under the FHA 245 program.

   In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO)

   See 1 and 2 above.

NOTE: The form attached to your letter, January 21, 1978 was mailed to each of the 2,965 member firms of the N. C. Home Builders Association -- our suggested changes are based on comments from the replies.

THE NORTH CAROLINA SAVINGS AND LOAN LEAGUE MAKES THE FOLLOWING COMMENTS CONCERNING CHAPTER 24 OF THE NORTH CAROLINA GENERAL STATUTES:

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

   Since members of the North Carolina Savings and Loan League generally deal exclusively with Chapter 24, the League will make comments only concerning Chapter 24.

   The structure of Chapter 24 should be designed for easier comprehension by employees of lenders who must frequently refer to the Chapter without changing the substantive provisions, except as suggested in number 2 and 3 below.

2. Please list below in order of importance specific problems you have encountered in dealing with Chapter 24 and related interest laws and your suggestions for remedying them.

   Again, since the members of the North Carolina Savings and Loan League deal exclusively with Chapter 24, the League will only suggest specific changes in Chapter 24 and not changes in related credit and interest laws.

   The North Carolina Savings and Loan League suggests the following substantive changes in Chapter 24:

   A. The fee provisions of G.S. 24-10 should be clarified to delineate specifically permitted fees and also provide that other reasonable fees may be charged if agreed to by the parties to a loan. Presently, there is a great deal of confusion among lenders as to exactly what fees are permissible.

   B. Chapter 24 should be amended to specifically provide that it is permissible to charge interest on interest in light of the alternative mortgage instruments being developed and specifically authorized by G.S. 54-20.

      An alternative mortgage instrument such as the graduated payment mortgage would permit a mortgagor to make a reduced payment for the first few years of the term of the mortgage (many times this payment would not cover the interest accrued) in anticipation of increased earning power. At a later date, the monthly payments would be increased, per the agreement of the parties, at such a time as the mortgagor is more easily able to budget and afford the increased payment.

By reducing the mortgage payments in the early years of the loan, the younger individual is more likely to be able to purchase a home. Compare this with a direct reduction loan which requires equal payments of principal and interest during the entire term of the loan. This type of loan requires that the mortgagor presently be able to afford a larger mortgage payment at the front end.

The graduated payment mortgage, by reducing the amount of the payment in the early years of the term, dictates that certain amounts of interest are accrued but not paid. The unpaid interest would, therefore, be added to principal.

Contractual agreement by the parties to a graduated payment mortgage would permit adding back unpaid interest to principal. Although it appears that the practice of adding back unpaid interest to principal and thereafter computing interest on the aggregate unpaid principal is proper under the present interest laws, Chapter 24 should be amended to specifically permit this practice and eliminate any question as to its permissibility.

C. G.S. 24-1.1B, Contract rates on loans to nonprofit organizations, should be amended to permit parties to contract in writing for the payment of interest not in excess of 10% per annum where the principal amount is one hundred thousand dollars or less and is secured by a mortgage or deed of trust on real property owned by a nonprofit organization and used for certain enumerated purposes.

The present 9% rate has become economically outdated. As the cost of money increases, the availability of money for these purposes will be diminished because of the artifically low interest rate.

D. G.S. 24-10 should be amended to specifically permit the charging of a late fee if the required payment is not received by the lender within ten (10) days after it is due. The fee should be payable on home loans, business property loans and loans to nonprofit organizations. We would suggest the following fee structure:

1. Home loans less than $100,000 - 5% of the payment due or $10.00, whichever is less.

2. Home loans of $100,000 or more, business property loans and loans to non-profit organizations - 5% of the payment due or $50.00, whichever is less.

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws?

No. The North Carolina Savings and Loan League feels that Chapter 24 is a relatively new and workable statute and that minor amendments and additions could be made to it which would cure any deficiencies.

Robert H. Gage

Legal Aid Society of Mecklen County

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

Generally, the interest rate provisions of Chapter 24 are unnecessarily confusing and ambiguous. Some of the provisions overlap and in others the true cost of credit is not clear to the average person because of the inclusion of "fees", "rates of charge" and the like. To a large extent, the whole chapter is a patchwork pattern of special legislation which should be clarified and simplified for the mutual benefit of lenders and borrowers.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

See attached.

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO)

A. From our experience, probably the most objectionable and unnecessary provision of Chapter 24 is Article 2 (G.S. §24-12 through 24-17). This section covers a certain class of loans of $7500.00 or less which are secured by secondary or junior mortgages on real estate. The section does not apply to loans made by banks, insurance companies, credit unions or savings and loan associations - it applies only to specialized second mortgage lenders. These lenders are given very favorable treatment when compared with the general second mortgage loan statute (G.S. §24-1.2(2)).

The most important part of Chapter 24, Article 2, and the one that has the most impact on consumers is G.S. §24-14 which allows lenders to collect a "rate of charge" of 10% of the principal amount of the loan (not to exceed $500). There are numerous problems with this provision:

1. The principal amount of the loan, as defined in G.S. §24-13 includes the rate of charge. Therefore, the rate of charge is computed as a percentage of itself as well as on the amount of credit extended. If the arithmetic is worked out, the rate of charge comes out to be 11.11% of the cash loan. This is very confusing and misleading.

2. The nominal interest rate under G.S. §24-14 is 12%. However, when the rate of charge is factored in, the Annual Percentage Rate (APR) is considerab higher. For example, a $4,000.00 loan financed over 5 years will yield an APR of approximately 18.9%. Thus the "12%" limitation in the statute does little to indicate the true cost of credit in this kind of loan transaction. Examples of two contracts drawn up under Chapter 24, Article 2 are attached to show how the rate of charge affects the APR of the loan. Examples of two advertisements, one for a G.S. 24-1.2 loan and the other for a G.S. 24-14 loan are also attached to show the substantially more unfavorable terms of the latter.

3. The rate of charge provisions in G. S. §24-14 is intended to ompensate lenders for credit investigation, appraisal and loan processing costs. owever, there is no requirement that the amount claimed under the rate of charge e reasonable, bona fide or actually paid to third parties. In our experience, the aximum amount is always collected by the lender. The maximum figure does not ppear to bear any relation to reality - for example, why should the processing costs f a $5,000.00 loan be more than 3 times as great as for a $1,500 loan? In short, he rate of charge is an invitation to rip off the unwary borrower.

4. The difficulty of disclosing the components of the rate of charge nd identifying them as part of the principal or the finance charge could easily ead to violations of the federal Truth in Lending Act. The absence in the statute of a rebate provision for unearned finance charges (as in the event of prepayment) could also lead to truth in lending problems. It is obviously in the interests of both borrowers and lenders to conform the statute clearly and coherently to federal law.

5. While most other lenders extending loans under Chapter 24 are regulated by the Banking Commission, Article 2 second mortgage lenders appear to be unregulated. This is difficult to understand in view of the fact that Article 2 lenders are allowed to charge significantly higher rates than those under G.S. §24-1.1 Also, many of these lenders are located within the offices of small loan companies which are strictly regulated by Chapter 53 and limited to a maximum $1,500.00 loan. Through the device of separate incorporation, mortgage loan affiliates of finance companies are allowed to extend $7500 loans free from the limitations of Chapter 53 and Banking Commission regulations.

The easiest way to improve Article 2 of Chapter 24 would be to eliminate it entirely or at least to conform it to G. S. §24-1.2(2). The existence of two separat second mortgage statutes is confusing and unnecessary - there should be one basic, understandable provision.

Another way to remedy the Article would be to eliminate the rate of charge and allow these second mortgage lenders to collect the fees or "points" authorized by G.S. §24-10, the provision that governs most other lenders. In the alternative, the rate of charge could be eliminated and the 12% interest rate increased slightly to compensate for it. This would reflect more accurately the true cost of credit and would create more statutory uniformity.

B. A more general problem with Chapter 24 is that interest and charges are not expressed in a uniform way to indicate the true cost of credit. The most significant example of this is the "rate of charge" provision discussed above. A significant step toward uniformity and clarity would be taken if all charges were expressed as a simple, actuarially computed interest rate. The principal amount of loan would be defined in terms of the amount of credit actually extended to the borrower, thus excluding all "charges" retained by the lender. Separate provision could be made for insurance costs and for reasonable and necessary charges paid to third parties.

Such a uniform expression of interest would closely conform state statutes with the goals of the federal Truth in Lending Act. It would simplify for borrowers and creditor alike the often bewildering detail of the present interest statutes. I would tend to strengthen competition by making the cost of credit readily apparent and by preventing certain classes of creditors from collecting hidden bonuses under the guise of rates of charge, fees or late payments.

Finally, it would be helpful for the public as a whole to have all interest rates for all types of consumer credit expressed in a single statute or chart. This would allow an individual at a glance to compare the costs of various types of financing, including bank loans, consumer finance loans (Chapter 53), credit card financing and retail installment sales plans (Chapter 25A). For example, by this means, an individual could easily compare the available methods of financing a used

car purchase without wandering through Chapter 24, Chapter 25A and Chapter 53. The statute or chart would be for informational purposes only. The various consumer credit chapters would not have to be combined - reference could be made to them in the informational chart.

FINANCE CHARGE

EXT NO	DUE	OID ACCOUNT NO	INSURANCE CHARGE
		1	5.00

ME	INITIAL	LAST NAME	SPOUSE

PAYMENT	AMOUNT FINANCED	DEFERRED PAYMENT PRICE	OFFICIAL FEES	TOTAL OF PAYMENTS
$2125.1	$	$2625.5	$	$6750.00

ONE NUMBER

OTHER INS.	CREDIT LIFE INS. PREMIUM	PROPERTY INSURANCE PREMIUM	PAID CURRENT MONTH
	$	$225.2	$0074.50

STATE - ZIP CODE

APR	SCHEDULE OF PAYMENTS - FIRST ONE	FIRST PAYMENT DUE	FINAL PAYMENT DUE
A 15.14 %	$145.00 AND 59 @ $145.0	A-	

ANNUAL PERCENTAGE RATE

EXCEPT FOR PAYMENT MADE BY BALANCE REMAINING UNPAID.

ARE CHARGES BEGIN TO ACCRUE EARLIER THAN LOAN DATE?

OTHER DUE DAYS EACH MONTH

o NOTICE - INSURANCE AUTHORIZATION - READ BEFORE SIGNING o

Credit Life Insurance is not required in order to obtain this loan. (2) The cost of such insurance is indicated below. (3) The Borrower(s) may use the insurance through whom the property insurance is to be obtained. If such insurance is obtained from or through Lender the cost is $225.20 for 60 months. (4) Only the Borrower whose name first appears above will be insured under Credit Life Insurance however, both Borrowers, if husband and wife, may be insured under Credit Joint Spouse Life Insurance. The undersigned hereby acknowledge reading the above including written disclosure of the cost prior to the execution of any note or other instrument evidencing said loan and authorize the Lender to obtain the insurance checked below.

We desire Credit Joint Spouse Life Insurance for the term of the loan at a cost of $ _____.

I desire credit life insurance for the term of the loan at a cost of $ _____.

▷

CO-BORROWER DATE CO-BORROWER (SPOUSE) DATE

Sample Disclosure Statements of Chapter 24, Art. 2 Contracts (Some Information Deleted)

COMBINED STATEMENT, NOTE, SECURITY AGREEMENT, DISBURSEMENT SCHEDULE AND ELECTION AS TO INSURANCE PERTAINING TO A LOAN

Account No _____

LENDER (Name and Address)

LIBERTY FINANCIAL PLANNING, INC
[illegible] W. Independence Blvd
Charlotte, N. C. 28203

To BORROWERS so called whether one or more

(Name)_____

(Name)_____

(Address)_____

CONTRACT FOR ON THE DATE AND INCLUDING THE TERMS AND FACTORS SET FORTH IN DISCLOSURES BELOW

PART I DISCLOSURES IN ACCORDANCE WITH FEDERAL LAW

(A) CONTRACT DATE	(B) AMOUNT FINANCED ((E) and (F) not included)	(C) PREPAID FINANCE CHARGE	(D) ANNUAL PERCENTAGE RATE	(E) COST OF CREDIT LIFE INSURANCE (Decreasing Term)	(F) COST OF PROPERTY INSURANCE ON
	$ 2512.56	(1) Interest $529.10 (2) "Rate of Charge" $270.34 Total $799.44	18.92 %	$ 79.68	Real Estate Improvements $none Household Goods $none Motor Vehicle(s) $none Total $none

$ 312.00

(H) PAYMENT SCHEDULE 35 consecutive monthly installments of which the first shall be $ 92.00 due on _____ of _____ 9_ and the others $ 92.00 each, due on the like numbered day of each succeeding month thereafter, provided that the last installment shall be the balance outstanding on its due date and that any installment for any month having no like numbered day shall be due on the last day thereof

Charlotte Observer, Jan. 15, 1978

Monthly bills bigger than the family budget?

Get a home owner loan from LENDER A

Lender A can lend you the money you need. Our home owner loans are available for any worthwhile purpose, including bill consolidation, home improvement, children's education or a dream vacation. Whatever you need, Lender A can make it happen, so give us a call. We'll make it happen for you.

Amount Financed	Monthly Payments	Total of Payments
$ 4,000	$ 70.62- 7 yr. 57.39-10 yr.	$ 5,931.31 6,886.60
$ 8,000	$141.23- 7 yr. 114.78-10 yr.	$11,862.63 13,773.20
$12,000	$211.84- 7 yr. 172.17-10 yr.	$17,793.94 20,659.80
$25,000	$358.68-10 yr.	$43,041.60

The examples above include closing cost and are based on Second Mortgage Loans with an Annual Percentage Rate of 12.00%. Other terms and amounts are available.

LENDER A
Phone 123-4567
100 Center St. Charlotte, N.C.

EQUAL HOUSING LENDER

31-H-01-14

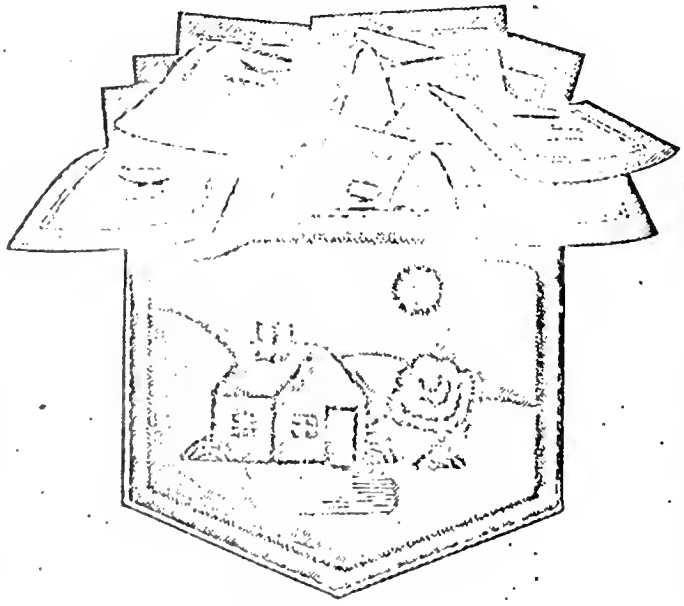
• • TV WEEK, JAN. 15-21, 1978 Page 3

Loans under G.S. 24-1.2(b)

The equity in your house is like money in your pocket.

Equity is the difference between how much your home is worth, and what you owe on it.

It's a valuable asset you can use to back a really big loan. For whatever you have in mind.



Real estate values are up, up, up.

So the house you bought just a few years ago probably would sell for a lot more than you paid.

Which means your equity is bigger.

And the bigger your equity, the more you can borrow in a large real-estate loan. Right here. Right now.

LENDER B
Phone 890-1234

100 Main St.
Charlotte, N.C.

MORTGAGE AND LOAN COMPANY

Amount Financed	Monthly Payment	Months To Pay	Total Of Payments	APR*
$4,000	$ 98.86	60	$ 5,931.60	16.75%
$5,000	$122.34	60	$ 7,340.40	16.28%
$7,000	$146.62	72	$10,556.64	14.63%

*Annual Percentage Rate NC-3

O-1-15

TV WEEK, JAN. 15-21, 1978 Page 7

Loans under G.S. 24, Art. 2

Leonard G. Green, Associate Atty. representing Wake County Legal Aid Society
Name and Title Organization

RVICES OFFICE

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

The provisions of Chp. 24 are jumbled together without any logical sequence. Furthermore, although this Chapter is entitled "Interest", it controls the interest rates of only a few types of transactions. In addition, the wording of some of the sections could be changed for increased clarity.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

(a) Reading Chp. 24 and understanding its relationship to the numerous other statutes which govern interest rates and credit transactions. This problem could be partially remedied by having all interest rates for all types of contracts set forth within Chp. 24.

(b) The terminology of Chp. 24 should be made uniform. Some sections refer to "rate of charge" while others speak in terms of "interest". Every charge for money should be denominated "interest". Also, interest rates should be expressed as annual rates, using the term "annual percentage rate". These and all of the terms should be defined in the first section of Chp. 24.

(c) All second-mortgage lending should be governed by one article under Chp. 24, whether the lender is a bank or finance company. These lenders should also be regulated by the same agency.

(d) The second clause of section 24-8 (allowing lenders to collect certain fees and costs from the borrower) should be amended to stipulate that all such fees and costs should be "necessary" and "reasonable" charges.

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO) No

Name and Title Mr. Richard Clark Representing Organization

APPENDIX L

1. Please list in brief your general criticisms of both the structure of and the substantive law concerning Chapter 24 of the General Statutes and related interest laws.

A. G. S. 24-1.1, G. S. 24-1.1A, G. S. 24-1.1B, G. S. 24-1.3 and G. S. 24-10 should be combined into one or two sections.

B. G. S. 24-11 should be rewritten so as to be more nearly like the section in its original form when enacted in 1969.

C. G. S. 24-12 through G. S. 24-17 should be carefully examined and amended.

2. Please list below in order of importance specific problems you have encountered in dealing with General Statutes Chapter 24 and related interest laws and your specific suggestions for remedying them. (Attach additional 8" x 10" sheets if necessary.)

First - Interest laws should be made to apply to time sales and to finance charges on contracts to sell. LAWYERS AND LENDERS ARE NOT CERTAIN OF THE LAW IN THESE SITUATIONS. Statute should spell out that interest laws apply to time sales and finance charges on contracts to sell.

Second- Try to make interest laws simple, by allowing only one or two rates, such as 10% on loans secured by lien on real property and 15% on installment loans not secured by lien on real property.

Third - On simple interest loans, default charges should not be allowed, so G. S. 24-15(b) should be repealed. DEFAULT CHARGES SHOULD ONLY BE ALLOWED ON INSTALLMENT CONTRACTS WHERE INTEREST OR FINANCE CHARGES HAVE BEEN PRECOMPUTED.

Fourth- Some home loan lenders are charging interest on money paid back early and default charges on simple interest loans. The legislature should prohibit these practices.

Fifth - G. S. 25A-29 should be amended to spell out that default charges are lnly allowed on installment sales contracts where interest has been precomputed, and that default charges are not allowed on simple interest consumer credit sale contracts.

Sixth - "Interest" should be defined .

SEE ATTACHED

3. In your opinion, would the interests of the people of this State be better served by a complete revision of the present interest laws rather than specific amendments to Chapter 24 and related interest laws? (YES or NO)

YES - IF PUBLIC FAIRLY REPRESENTED.

Remarks By:
Richard Clark, 2nd Vice President
North Carolina Consumers Council, Inc.
P. O. Box 308
Monroe, N. C. 28110
Tel. AC 704/283-8148

Before the:
Committee on Credit and Interest Laws
of the Legislative Research
Commission of North Carolina

January 20, 1978

I am Richard Clark, Second Vice President of the North Carolina Consumers Council. For more than 26 years, I have practiced law in North Carolina. Most of my working days as an attorney involve loan and credit transactions.

North Carolinians have joined the rest of the nation in becoming a credit society, and in recent years, the North Carolina General Assembly has been actively involved in writing and rewriting the credit and lending laws of this state. In addition, the U. S. Congress has enacted credit legislation, including the federal Truth-in-Lending Act.

Now is a good time for the General Assembly to take a hard look at these lending and credit laws--by a committee which has not been formed to help some particular special interest group get legislative favors. So far as I can recall, this is the first such committee created by the General Assembly to make such a compressive and unbiased study. The Consumers Council compliments the General Assembly.

Many of us have strong opinions about many specific provisions of the interest and credit laws--with specific ideas as to how these provisions should be changed. But I will not speak to these. Rather, I will make recommendations for changes which will make the laws understandable.

The public interest will be well served if the General Assembly changes our present laws so that they will be consistent and clear. To these ends, the Consumers Council suggests:

I. That the so-called "time-price" doctrine be eliminated. As recognized by our Court, this doctrine enables a party to have two prices, a cash price and a time price, thus evading the interest laws enacted by the General Assembly. Chapter 25A of the General Statutes eliminates this doctrine in connection with the sale of consumer goods, but the time-price doctrine continues to be used in connection with the credit sales of other properties--real and personal.

II. That "interest" be defined and expressed in the same way in all lending and credit laws.

III. That G. S. 24-11 involving revolving credit charges be carefully studied and rewritten. The 1977 Session of the General Assembly made drastic and far-reaching changes which have caused conflicts and inconsistencies with other interest and credit laws.

Under the present G. S. 24-11, it now appears lawful to secure revolving credit loans by a first mortgage or other lien on any real or personal property or other thing of value. This is not consistent with other parts of Chapter 24.

IV. Article 2 of Chapter 24 (G. S. 24-12 through G. S. 24-17) permits second mortgage lenders to charge very high fees and interest. This law, written in 1971, was amended by the 1973 and 1977 Sessions of the General Assembly to substantially increase fees. Because of the 1973 and 1977 amendment and other recent changes in other credit and lending laws, the Consumers Council recommends that the entire article be repealed or that G. S. 24-14 and G. S. 24-15 be amended by reducing the fee permitted by G. S. 24-14(a)(2) and by striking out the last sentence of G. S. 24-15(a).

V. G. S. 24-1.1, G. S. 24-1.1A, G. S. 24-1.1B, G. S. 24-1.3 and G. S. 24-10 should be studied together to the end that these five sections be rewritten. These five sections were written and amended under circumstances not conducive to sound legislation. They are the basic interest laws of this

state and should be carefully reviewed.

VI. The law should clearly state whether or not a lender can charge interest on loans which are paid in full before the interest is earned. Most of our home loan institutions collect interest one month in advance. A few of these institutions retain or charge interest for the entire month in which the loan is paid off early. That is, if a home owner pays his loan in full on the 1st, 2nd or 15th day of a month, some of our home loan institutions charge interest for the entire month. Most do not. The law should spell out whether this practice is lawful.

Good, clear laws--with adequate legal means for redress--is the most effective way to enforce laws.

State government regulators, except for the Consumer Protection Division, appear to provide little protection to the public from violation of the lending and credit laws of this state.

It is difficult to understand why those charged with regulating lending institutions do not take a more active roll in developing legislation involving the institutions regulated by them. The Consumers Council is deeply troubled by the hands-off attitude of the Banking Commission in legislative matters affecting those who borrow from banks and small loan companies. Unfortunately, the regulators of these institutions appear to be a classic example, insofar as the borrowing public is concerned, of "the regulated regulating the regulator." Presently, the Banking Commission acts as the defender of banks and small loan companies against the consuming and borrowing public.

E N D

THE NORTH CAROLINA SAVINGS AND LOAN LEAGUE MAKES THE FOLLOWING COMMENTS CONCERNING CHAPTERS 54 and 54A:

1. Please list your specific criticisms of the present provisions of North Carolina General Statutes Chapters 54 and 54A as they relate to mutual and stock savings and loan associations.

   a. Present state-chartered mutual savings and loan associations should be permitted to convert to the stock-owned form rather than being specifically prevented from doing so as provided in G.S. 54A-1.

      Federally-chartered mutual savings and loan associations have the regulatory right, subject to the approval of the Federal Home Loan Bank Board, to convert from the mutual form to the stock form. The Federal regulations dealing with conversions are contained at Section 563b, Title 12, Code of Federal Regulations (C.F.R.).

      G.S. 54A-1, restricting the right of state-chartered mutual savings and loan associations to convert to the stock form, should be amended by deleting the last sentence thereof. Thereafter, provision should be made to permit the conversion of mutual savings and loan associations to the stock-owned form of savings and loan associations.

      The statutory provisions and any regulations promulgated therefrom for such a conversion should be studied thoroughly in order that conversions are fair and equitable.

      The North Carolina Savings and Loan League offers its assistance in the drafting of any such statutes or regulations.

   b. Presently, the statutory criteria for chartering a mutual savings and loan association (G.S. 54-2(b)) provides that the Administrator of the Savings and Loan Division may refuse to certify the articles of incorporation if he determines that the "public convenience and advantage" will not be promoted by its (the proposed mutual savings and loan association) establishment.

      Section 9C.0102, Guidelines In Considering Application, of the North Carolina Administrative Code adds an additional criterion of need. Section 9C.0102(7) reads as follows:

      "(7) It will be the responsibility of the applicant to furnish evidence of the area need for such a facility and that convenience and advantage to the public will be promoted thereby."

Section 9C.0202, Guidelines In Considering Application, of the North Carolina Administrative Code dealing with branches also adds the additional criterion of need. Section 9C.0202(7) reads as follows:

"(7) It will be the duty of the applicant to furnish evidence that the public convenience and advantage will be promoted relative to an area need for such a branch office facility."

The statutory criteria for the establishment of a stock-owned savings and loan association, as provided in G.S. 54A-10(b), contain no reference to a need criterion.

G.S. 54A-10(b)(7) states the Administrator of the Savings and Loan Division must be satisfied that:

"(7) The public convenience and advantage will be served by the establishment of the proposed association." (Stock-owned association)

There are no regulations contained in the North Carolina Administrative code dealing with the certification of the certificate of incorporation for stock-owned savings and loan associations. Stock-owned savings and loan associations applying for branch offices must meet the same criteria as mutual savings and loan associations, and therefore, meet the additional need criterion.

The North Carolina Savings and Loan League believes that both mutual and stock-owned savings and loan associations should have the same criteria to justify the granting of a charter or a branch. Therefore, the North Carolina Savings and Loan League suggests the following:

1. G.S. 54-2(b) should be amended by deleting "that the public convenience and advantage will not be promoted by its establishment" and substituting therefore "that the public convenience and necessity will not be promoted by its establishment".

2. G.S. 54A-10(b)(7) should be rewritten to read as follows: "The public convenience and necessity will be served by the establishment of the proposed association."

3. Of course, any amendment of the above statutes would necessitate the amendment of any regulations promulgated pursuant to these statutes.

STATE OF NORTH CAROLINA

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH 27611

MEMORANDUM

TO: Members of the Committee on Credit and Interest Laws
Legislative Research Commission

FROM: Terrence D. Sullivan, Committee Counsel

DATE: March 21, 1978

RE: Interest law models

The Committee at its last meeting directed the staff to obtain information on approaches of model acts and of other states' laws with regard to interest regulation.

I attach outlines of two model acts--the Uniform Consumer Credit Code (U3C) which has been adopted by eleven states; and the Uniform Land Transaction Act which was proposed in 1975 and has not yet been adopted by any jurisdiction. I emphasize that the attached sheets contain only outlines of interest regulation approaches of complex model laws. If the Committee should decide to pursue these models further, copies of them can be gotten.

Mr. Alan S. Hirsch, Assistant Attorney General, is preparing an outline of other states' approaches, besides the U3C, to interest regulation. His outline will be presented at the March 30 meeting.

Enclosures

UNIFORM CONSUMER CREDIT CODE (U3C)

The National Conference of Commissioners on Uniform State Laws in 1968 proposed a single comprehensive law to provide "a modern, theoretically and pragmatically consistent structure of legal regulation designed to provide an adequate volume of credit at reasonable cost under conditions fair to both consumers and creditors." Under this Act, the total consumer credit process--from advertising through collection--would be within the scope of regulation, with variations in law based upon functional differences in the kinds of transactions rather than on kinds of creditors involved.

Eleven states have adopted the U3C in some form: Colorado, Idaho, Indiana, Iowa, Kansas, Maine, Oklahoma, South Carolina, Utah, Wisconsin, and Wyoming. The National Conference in 1974 put forth a new revision of the original 1968 text which incorporated some of the major recommendations of the federally-sponsored National Commission on Consumer Finance, the first comprehensive examination in the United States of the whole field of consumer finance.

The U3C would establish maximum finance charges in various types of consumer credit transactions. These transactions are as follows:

1. consumer credit sale pursuant to open-end credit;
2. consumer credit sale not pursuant to open-end credit;
3. consumer loans by supervised lenders; and
4. consumer loans by unsupervised lenders.

The U3C's definition of finance charges and its provisions on "additional charges" are substantially similar to the concept of finance charge contained in Regulation Z promulgated under the Federal Truth in Lending Act (Comment to §1.301(20)).

Consumer loans which are secured by an interest in land and whose finance charge does not exceed 12% are not subject to the provisions of this act. The comment to Section 1.301(15) of the act states that:

> With respect to this Act's treatment of real property transactions, the 12% cut-off was chosen as a convenient line of demarcation between two dissimilar transactions--the home mortgage and the high rate, "small loan" type of real estate loan. The exclusion of the home mortgage was made because the problems of home financing are sufficiently different to justify separate statutory treatment. On the other hand, the high rate second mortgage transaction has been a major source of consumer complaint and merits full coverage by this Act. Since the Truth in Lending Act applies to real estate credit without regard to the rate of finance charge, the provision on compliance

> with Truth in Lending . . . applies to all consumer real estate transactions without regard to the rate of the finance charge.

In the following transactions, other than consumer credit transactions, the U3C would leave the finance charge and other charges basically to the agreement of the parties:

(a) A transaction by a seller or lender not regularly engaged in similar credit transactions,

(b) A transaction over $25,000 in amount not including real property,

(c) A transaction in which an organization is the debtor, and

(d) A transaction for a business purpose (Comment to §2.601).

In 1969 the General Assembly authorized a Uniform Consumer Credit Code Study Commission. The Commission found that the time allotted for its study of the U3C was inadequate in view of the U3C's complexity and wide-ranging effect on significant aspects of the credit economy (Report of North Carolina Study Commission on the Uniform Consumer Credit Code; December, 1970, p. 1).

UNIFORM LAND TRANSACTION ACT (ULTA)

The ULTA is the product of the National Conference of Commissioners on Uniform State Laws, as is the UCC and the U3C. The ULTA was recommended for enactment by all the states by the National Conference in 1975. As of this date, no states have adopted this model act.

The ULTA provides major warranties of title and of fitness for purchasers of real property. It regularizes the financing processes, including the process of foreclosure in the event of a default. It spells out the responsibilities of the parties in the total transaction.

Part 4 of Article 3 of the ULTA permits parties in all obligations secured by real estate to contract for and receive any finance charge and additional interest. However as to credit extended to a "protected party", the act would recommend that the legislature establish a maximum finance charge. A "protected party" is (1) a person who gives a real estate security interest in residential real estate in which he resides or intends to reside; (2) a person who becomes obligated primarily or secondarily on a contract to buy or have improved residential real property if at the time he becomes obligated he is related to an individual who resides or intends to reside on the residential real property; or (3) is an individual who acquiring residential real property assumes or takes subject to an obligation of a prior protected party. This Part of the model act uses the terms "finance charge" and "additional charges" in the same manner as the Federal Truth in Lending Act so that, in the case of a real estate mortgage, the finance charge disclosed for federal truth-in-lending purposes is also the finance charge which determines whether the lender is charging a usurious rate.

State of North Carolina
Department of Justice
P. O. Box 629
Raleigh
27602

RUFUS L. EDMISTEN
ATTORNEY GENERAL

March 24, 1978

MEMORANDUM

TO: Legislative Study Commission Members

FROM: Alan S. Hirsch
Assistant Attorney General

RE: Other States Interest Laws

Shortly after the first meeting of the Study Commission, I wrote a letter to the Attorneys General and Banking Commissioners of the other 49 states, requesting that they give us their opinion of the workability of their states' interest laws. To date, we have received replies from over three-quarters of those contacted. Those states' statutes which elicited favorable comment were then examined. They fall into three basic groups. The first group consists of quite simple statutes that set out broad and general maximum interest rates, and do little more. For example, Rhode Island, Nevada, Hawaii, and New Mexico set out one or two maximum rates of interest and forbid usury. South Dakota and Arizona have three maximum rates of interest and a few additional provisions. However, none of these states have any of the more complex substantive provisions which have developed in our law. The second group is those states that have adopted the Uniform Consumer Credit Code (UCC). This uniform statute is summarized in Terry Sullivan's presentation today. The third group is those statutes of some complexity which are also well organized and detailed. Unfortunately this group consists of only one state -- Maryland.

Maryland divides its interest statute into six parts:

(1) A general part, which includes an 8% contract rate, a 10% real estate rate (with fee limitations), a 12% unsecured installment rate, and unlimited federal agency and corporate rates. It describes permissible fees, sets out other miscellaneous requirements, and imposes penalties for usury.

(2) Small loan rates and rules, similar to our Consumer Finance Act, but limited to loans of $500.00 or less.

(3) Consumer loan rates and rules, for loans of $3500 or less.

(4) Second mortgage loan rates and rules.

(5) (6) Retail credit and installment rates and rules.

Our substantive laws are adaptable to this type of statutory scheme.

James B. Hunt, Jr., Governor
D. M. Faircloth
Secretary

NORTH CAROLINA
DEPARTMENT
OF COMMERCE

Savings and Loan Division
W.L. Cole, Administrator
George C. King,
Deputy Administrator
(919) 733-3525

STATEMENT OF: W. L. Cole
Administrator

TO: Committee on Credit and Interest Laws
Legislative Research Commission

DATE: December 1, 1978

I have been requested to review with you the activities of the Savings and Loan Division concerning the rewrite of Chapters 54 and 54A of the General Statutes. I think it would be appropriate to start this statement with a disclaimer to ensure that you are not mislead by anything we discuss here today. My comments must, of necessity, be of a general nature since the detailed review of the two Chapters has not yet been totally completed and has not been coordinated with the Governor's Office. I am sure you realize that it would be inappropriate for me to present to you the results of uncoordinated first drafts.

In our rewrite we propose to combine Chapters 54 and 54A. We view savings and loans, be they mutual or stock, as similar institutions which more appropriately should be regulated by a single Chapter of the General Statutes. We are initially proposing a chapter to contain some twelve (12) articles. The major changes from the existing Statutes which we will propose will cover the areas of corporate changes and supervision and regulation. Under corporate changes, we will propose

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the regulation of the various types of conversions available when considering six types of savings and loan organizations. Under supervision and regulation, the major proposed changes would be the inclusion of the Supervisory Powers Act which would very generally parallel the provisions of a Model Supervisory Powers Act developed by the National Association of State Savings and Loan Supervisors. This Article, if approved, will provide for specific remedies for specific regulatory problems which may be encountered.

My estimate is that we have completed approximately 85% of the rewrite we consider necessary and that we will have a completed package available for review by the appropriate members of the Executive Branch by the week of the 18th of December. After that review, we will of course make available to any members of this Committee copies of the final version of our rewrite.

I would be glad to entertain any questions you might have.